AARON ZACHARIA

UNCHECKED ADVANTAGE

A Deep Dive into Congressional Capital Gains

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kindle direct publishing

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For my sisters,
Anne and Alexa

Ask not what your country can do
For you – ask what you can do
For your country.

—JOHN F. KENNEDY, 35th U.S. PRESIDENT

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ABBREVIATIONS

AOC	Alexandria Ocasio-Cortez
DA	District Attorney
DOJ	Department of Justice
ETF	Exchange-traded Fund
ETHICS Act	End Trading and Holdings In Congressional Stocks Act
FBI	Federal Bureau of Investigation
FDA	Food and Drug Administration
FDIC	Federal Deposit Insurance Corporation
FDR	Financial Disclosure Report
FTC	Federal Trade Commission
GAO	Government Accountability Office
GDP	Gross Domestic Product
GME	GameStop Corporation

HCA	Hospital Corporation of America
IPO	Initial Public Offering
ITSFEA	Insider Trading and Securities Fraud Enforcement Act
MAD	Mutually Assured Destruction
MTG	Marjorie Taylor Greene
NATO	North Atlantic Treaty Organization
NYPD	New York Police Department
NYSE	New York Stock Exchange
OCE	Office of Congressional Ethics
OWS	Occupy Wall Street
PELOSI Act	Preventing Elected Leaders from Owning Securities and investments Act
POPS	Privately Owned Public Space
POW	Prisoners of War
QBT	Qualified Blind Trust
Reg FD	Regulation Fair Disclosure
SAC	Steven Alan Cohen

SEC	Securities and Exchange Commission
SOX	Sarbanes-Oxley Act
STOCK Act	Stop Trading on Congressional Knowledge Act
TARP	Troubled Asset Relief Program
TRUST in Congress Act	Transparent Representation Upholding Service and Trust in Congress Act
USD	United States Dollar

PREFACE

Nothing discloses real character like the use of power.
It is easy for the weak to be gentle.
Most people can bear adversity.
But if you wish to know what a man really is,
give him power.

– Robert Green Ingersoll, 1833-1899[1]

THIS BOOK PRESENTS rationale for the urgent necessity to fill regulatory gaps in legislation governing how members of Congress should be allowed to buy and sell stocks. But it also provides insight into how elected officials gain an unscrupulous stock trading advantage, mainly through their possession of "insider" intel. The Oxford Dictionary defines an insider as "a person who knows a lot about a group or organization because they are part of it." However, the crux of the problem stems from the current laws in place to regulate this activity and from the guile of lawmakers themselves, who are cleverly doing the regulating.

Despite the wide net of political literature that could be cast on legal policy, this book will mainly focus on highlighting the need for

further financial regulatory action in the United States, more specifically on the well-manicured politicos trading inside Capitol Hill. In recent decades, representatives and senators have made extremely "*well-timed*" and "*convenient*" trades in the stock market. The issue of conflict of interest has become so evident that some members of Congress are lobbying to relinquish their trading rights. Many proposals from Democrats and Republicans alike seek to ban congressional trading.[2] American voters appear to support this ban as well. In a survey conducted by the Trafalgar Group, a whopping 70 percent of Democrats, 78 percent of Republicans, and 80 percent of Independents believed that congressional trading should be outlawed.[3]

Since it is evident that the public has come to a non-partisan consensus, one may ponder, "What factors are preventing the ban from being implemented?" The reason can be attributed to the 40 percent of members of Congress who have their investments in the stock market. This equates to over 220 representatives and senators who own individual stocks.[4] So, despite the multiple bills introduced by members of Congress, there is no guarantee that anything will pass through the Senate and House of Representatives and then be signed by the sitting president.[2]

Nevertheless, these policies should be predicated on the desires of voters, and not the greed of capitalistic "one-percenters." This can be traced back to America's founding documents, most notably the Constitution. The preamble states, "We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence,

promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.[5]" Our Founding Fathers' goal of promoting the general welfare is highly relevant here: it calls for preventing members of Congress from exploiting their political power for personal profit.

However, the structural hurdle of banning congressional trading is complex and highly nuanced. To ensure clarity for this book, I will make known the most recurring topics featured in my book, as well as its organizational segments. The text below serves as this book's outline, along with certain added details.

The first chapter examines the origins of the stock market and the brisk arrival of greed that accompanied it. Through vivid historical narratives, we delve into seminal events like Jay Gould's conniving manipulation of the Erie Railroad Company's stock and his financial war with famed magnate Cornelius Vanderbilt. Additionally, President Ulysses Grant's infamous "Black Friday" scandal triggered a nationally crippling financial crisis.[6] We shall see the influence of political scandals throughout history, and why the same fundamental roots of corruption in office can be noted in the evolving political landscape of America today.

Chapter 2 will highlight how the U.S. government has tried its hand at many failed attempts to regulate and ban insider trading among elected officials in the past. This section intends to shed light on the legal hurdles towards banning insider trading, even with landmark legal precedents and bills like *Strong v. Repide* in 1909 and the

Securities Act of 1933, to name a few. It will demonstrate how these regulatory policies were later overshadowed by the U.S. Securities and Exchange Commission's attempt at creating financial integrity within legislators, inevitably reaching the same fate as the Supreme Court's rulings and introduced legislation in Congress. In the face of all the consequences of insider trading, high-profile individuals were still finding methods of trading at an unfairly advantageous level.[6]

Chapters 3 and 4 explain reasons why President Obama deemed it necessary to sign the STOCK Act into law, as well as the actual impact it had on members of Congress – little to none. We will examine the particulars of Obama's law and the meager $200 fine imposed on senators and representatives for profiting from insider trades. We will analyze the STOCK Act's limited effectiveness in curbing insider trading, including the recurring "tardiness" of members of Congress when reporting trades. Also mentioned is the commonality of excuse-making, including ignorance of the bill, clerical mistakes, and accounting slip-ups by members of Congress.[7] And finally, the largest hurdle for Obama's bill, remains the "Speech or Debate Clause." The clause's constitutional protection prevents serious investigations into any information legislators receive as lawmakers, making it nearly impossible to distinguish privileged use of intel from mere dumb financial luck.[8]

While most elected officials tend to be self-serving, they can also be swayed by the will of their constituents. Chapter 5 discusses game theory models as the cause of political cooperation or defection from voters, and a multitude of historical examples supporting this phenomenon as well. We will delve into Robert Axelrod's "Tit for

Tat" strategy as a tool for understanding cooperation, as well as historical examples that support this model.[9] The analysis will show how selfish actions by politicians can ultimately jeopardize the very power entrusted to them. So, despite lawmakers wielding classified information, they will ultimately be forced to cooperate or suffer the consequences. Furthermore, we will explore why politicians should strongly deliberate about their payoff evaluation, and whether it is worth forfeiting re-election prospects or their political reputations. We shall see why avoiding a *Tragedy of the Commons* scenario will be optimal for ensuring both the American people and elected officials are left satisfied, and how appealing to both parties' self-interests will be crucial for extensive legislative reform. Analogous examples will be provided to show how cooperation between parties typically leads to a more favorable outcome.[10]

Chapter 6 delves into utilitarianism and why its application by lawmakers could be largely beneficial. Utilitarianism's main ideal states that an act is moral so long as it produces the greatest benefit for the greatest number. In turn, lawmakers should carefully consider the utility of their legislation. The utility of action can be defined by the "greatest happiness principle," which states, "Actions are right in proportion as they tend to promote happiness, wrong as they tend to produce the reverse of happiness… not the agent's happiness, but that of all concerned." Moreover, John Stuart Mill's two utilitarian commitments should be tied hand in hand with senators' and representatives' regulatory course of action.[11] Mill's ideologies, revealed in his essay about governments, elucidate that those in power should be held democratically accountable for a plethora of reasons.

Fundamentally, a person predominantly acts with the intent to promote self-interest. Hence, there is a need for a ruler's interests to align with those being governed and to be politically accountable.[12]

With the circumstances of congressional trading, the philosophies are parallel to legislators' decision-making processes. Retail investors should be prioritized in laws surrounding trading to fight against the tyrannical reign of institutional investors. We will see how the GameStop short squeeze is an example of how ordinary investors can create market waves through the unification of investments from prevalent online forums like Reddit. As a result of their squeeze, massive hedge funds and institutional investors took a huge financial hit.[13] This rare instance proves that individual investors can disrupt market dynamics and financially overthrow institutional investors and members of Congress if they fail to keep their utilitarian commitments.

Regardless, the primary advantage institutional investors, or in this particular case, congressional investors, have is simply priceless: Insider information. Awareness of this knowledge gives these formidable institutions and members of Congress the luxury of making bets before any amateur investors can. This contention will elaborate on how politicians' insider trades have become public knowledge through apps like Autopilot, and as a result, level the playing field for retail investors.[14] This aspect also creates new avenues for financial rebellion from supporters who do not believe their interests are being prioritized by lawmakers.

Building on the need for ethical accountability, Chapter 7 underscores the need for constant vigilance in protecting against tyrannical manipulation from politicians seeking financial gain from classified information. With the help of Machiavelli's political theories as a lens, we will explore how some politicians practice dangerous Machiavellian tactics, prosecuting insider traders while creating special exemptions for themselves.[15] A prime example is Raj Rajaratnam's harshly imposed sentence for insider trading charges. The Wall Street titan was well-known in the hedge fund industry for his shrewd investments with the Galleon Group. Much to his peril, it was later discovered that Rajaratnam was engaging in insider trading.[16] These instances of hypocrisy, mentioned by Machiavelli himself, are essential for democracy. However, political hypocrisy should be used conservatively and only when it benefits the common good.[17] In this case, insider trading does not fall into the category of "strategic hypocrisy". Rather, it erodes public trust in elected officials and undermines democratic ideals.

In addition, we shall see how, from a consequentialist's standpoint, lawmakers may compromise their moral principles for the immediate public interest, per "The Problem of Dirty Hands," but still cannot justify congressional trading as holding moral intent.[18] By ignoring deontology and putting power over integrity, Machiavellian politicians will create a climate of cynicism, inherently spoil the cornerstone of democracy and create a dark future for Americans.

Chapter 8 outlines the current legislative landscape regarding congressional trading reform. We will note the present status of bills being proposed by representatives and senators. Senators Jon Ossoff

and Mark Kelly announced their version of reform. Dubbed the Ban Congressional Stock Trading Act, it would mandate all members of Congress to meet certain requirements: Members, their spouses, and dependent children shall divest from their holdings. If they insist on continuing to trade stocks, they must put their stocks into a blind trust.[19] Moreover, Congresswoman Abigail Spanberger's bill is called the Transparent Representation Upholding Service and Trust (TRUST) in Congress Act. Similarly, to Ossoff and Kelly's bill it stipulates that members of Congress and their direct family members put investment assets into a blind trust as well.[20] This chapter will examine these proposals and argue for public support.

Finally, Chapter 9 offers closing remarks on the path forward for reforming congressional trading laws. The mental framework of a master strategist nearly four centuries ago will be used to illustrate the type of thinking required to create an effective movement in Congress. Detailed examples of methods and techniques for fighting for honorable lawmaking will also be suggested.

This book not only advocates for regulatory reform but also delves into history, philosophy, and political context. It highlights ploys, loopholes, and past instances of members of Congress trading in the stock market and not being convicted of any transgressions. Most importantly, it underscores the need to preserve constitutional values - the reason I felt compelled to write this book. I am confident that readers will benefit greatly from this book, not solely due to my vested interest in its success, but also because of its urgent call to action. By spreading awareness, petitioning Congress to prioritize public welfare, and protesting for swift policy implementation, we can

serve as vigilant defenders against autocracy to protect democracy in the United States.

CHAPTER

1

GOLDEN GREENBACKS

Law!
What do I care about the law?
Hain't I got the power?

– Cornelius Vanderbilt, 1794-1877[21]

Millions around the world envy America's galvanizing hope: a promise that the ordinary can become extraordinary. The "American Dream" represents one of the most coveted opportunities in the world. Ideally, everyone should be able to accomplish prosperity through hard work and resilience, irrespective of race, gender, religion, or socioeconomic status. Unfortunately, the current state of American society no longer guarantees that dream for all its citizens. This erosion of opportunity extends to the stock market as well, long considered one of America's most promising avenues for wealth creation.

The Birth of American Financial Markets

While the first stock market began in Amsterdam in 1611, the U.S. entered the arena in the late 1700s when a small group of merchants formed the Buttonwood Tree Agreement. The agreement was that the group of men would meet daily to buy and sell stocks and bonds, which eventually created the lore of what we know today as the New York Stock Exchange (NYSE).[22]

As the stock market grew in the 1800s, elites quickly began participating in financial fraud and scandalous dealings. A commonly used strategy was *insider trading*, which at the time was completely legal. Insider trading refers to buying or selling securities based on material, nonpublic information – a practice that creates unfair advantages in the marketplace.[23] Historically, financiers, politicians, and executives in the U.S. have not shied away from using this tactic.

Jay Gould: America's Railroad Robber Baron

American magnate and railroad builder Jay Gould was infamous for brazenly committing financial crimes. Despite his financial prosperity, he despised making any charitable donations. In fact, in Gould's sermon following his death, only shameful words such as these were memorialized by his peers: "Gould, with his 70 million, was one of the colossal failures of our time. He was a purely selfish man. His greed consumed his charity. He was like death and hell, gathering all in, giving back nothing.[24]"

Gould embodied nineteenth-century American capitalism, especially as an influential railroad developer. To begin his career, he received training from local schools within his home state of New York. Gould's first job was as a surveyor for the state of New York. Later, he went on to become involved with the railway industry and was an enthusiastic investor in railroad stocks. Jay Gould worked and conducted business with many railroads in his lifetime, including the Rensselaer Railway, Saratoga Railway, Rutland Railway, and Washington Railway throughout the 1860s.

The Erie War: Stock Manipulation in Action

Above all, the railroad that brought Gould his greatest notoriety was the Erie Railroad. Particularly, it was his conniving strategy towards gaining control of the Erie Railroad, which was later dubbed "The Erie War".[25] A long way from his humble origins as an impoverished boy, Gould was now a high-flying stockbroker on Wall Street who wanted to venture into the world of industrial ownership.

To Gould's frustration, three of America's wealthiest men were also intrigued by the opportunities presented by the Erie Railroad: Cornelius Vanderbilt, James Fisk, and Daniel Drew. However, Vanderbilt posed the largest threat to the other three men.[24] This was owed to his immensely high net worth of over $100 million. Born into a family as poor as Gould's, Vanderbilt had made his fortune through steamships and railroads. A famously ambitious businessman, Vanderbilt was not open to backing down from a financial battle to gain control of the Erie Railroad.

Keeping Cornelius Vanderbilt in mind, Jay Gould conspired with Jim Fisk to gain dominance over the Erie Railroad. At the time of the Erie War, in 1868, the Erie was controlled by railway financier Daniel Drew. Gould and Fisk's ploy was to collude with Drew so he would help them gain financial influence over Vanderbilt.[26]

Jay Gould's role in the Erie War was remembered as one of the first instances of stock manipulation in America. In the three men's quest for power, to surpass Vanderbilt, Gould issued another 100,000 shares of Erie Railroad stock through illegal means. He achieved this by converting bonds to stock and solidifying his power by bribing incumbent legislators to authorize his conversion.[6] The Erie War finally ended with Gould and Fisk gaining ultimate control over the railway, while also betraying Drew. As for Cornelius Vanderbilt's compensation, he received diluted stocks from the two swindlers.[26]

But Gould's thirst for greed had not been quenched just yet, as he was also planning another financial scam. In the wake of the Erie War, with full control over the Erie Railroad, Gould promoted an

expansion campaign. His campaign only had one issue – it was increasing the company's capital debt. Behind closed doors, however, Gould was secretly betting against the Erie stock by shorting it. By 1875, he walked away with a huge sum of cash before its imminent bankruptcy.[6]

At the time, Gould's fraudulent behavior appeared to be enabled by elected lawmakers. This historical pattern—government officials accepting bribes and enabling corruption—has parallels in today's America, albeit in different forms. It provides a historical lens through which we can observe the contemporary issues of members of Congress being allowed to trade. Gould's actions went down in history as greedy, manipulative, and duplicitous, frequently using his position of power and connections for his financial gain. His manipulation of stocks to wrest control over the Erie Railroad should be taken as a lesson for the American public even today.[24] The historical and modern parallels lie in the breach of public trust and the ease with which systemic flaws were exploited.

The Black Friday Gold Market Crash: Presidential Corruption

18th U.S. President Ulysses S. Grant tarnished his reputation for the same reason as Gould. This scandal surrounding President Grant originated from two familiar rogues: Jay Gould and Jim Fisk. As mentioned previously, Gould and Fisk were both renowned magnates worth millions of dollars. But they also happened to be shrewd gold investors and had valuable connections. However, the two men were fearful of Grant's potential policy. Their paranoia stemmed from President Grant's administration being ready to extend President

Andrew Johnson's monetary policy. Similarly to Johnson, Grant tried to improve the economy by reducing the supply of paper dollars. He planned to do so by leveraging gold to buy back dollars or "greenbacks" from citizens at a lower price and replacing them with currency backed by gold.[27]

This economic context created urgency for Gould and Fisk to execute their ploy – or as historians call it, The Black Friday Gold Market Crash of 1869. It all began when Gould and Fisk sought out a man named Abel Corbin, a very wealthy individual who was, most importantly, married to Grant's sister. Virginia Paine Grant Corbin was an instrumental connection in their scheme. Mrs. Corbin successfully convinced Grant to appoint General Butterfield as assistant treasurer of the United States. The crucial aspect of Butterfield's job was to manage government gold sales on Wall Street. In return for a share of the profit, Butterfield agreed to tip the plotters off right before the government was ready to sell its gold. Not long after, President Grant uncovered a letter from his sister to his wife regarding Butterfield's agreement – he finally knew he was being duped.[6]

But it was far too late, as Gould and his colluders had already started hoarding gold assets during the summer of 1869. They managed to skyrocket gold prices traded on the New York Stock Exchange's gold room from $100 per unit to $141 per unit in just the month of August alone. This economic shift crushed unsuspecting speculators and investors who were shorting that stock. Little did they know, they were the victims of another one of Jay Gould's financial scams. Furious, President Grant forced his wife to send a letter to

Corbin, demanding he cease any further actions. Simultaneously, embodying his reputation as a fraudster, Gould sold his gold holdings at an astronomical return. Ironically, Gould hid his transactions from the very partners with whom he had conspired.[28]

As gold prices soared to $145, President Grant ordered that the U.S. Treasury Department relinquish $4 million in government-controlled gold reserves. He performed this action on September 24, 1869, and its consequences are now known as America's first Black Friday. President Grant's order single-handedly engendered financial distress because not only did gold prices plummet, but so did most Wall Street stocks. As a result, the investors who had taken out loans to buy gold had no money to escape their debt and were left to face financial ruin.[27] Foreign trade ceased entirely, leaving most American farmers without a livelihood. Consequently, the value of farmers' wheat and corn was halved.[28]

The Aftermath of Corruption

The aftermath of America's "Black Friday" incident caused widespread economic damage. Unfortunately, it also depressed the U.S. economy for several years and besmirched the public's faith in President Grant. A congressional investigation followed, but the Republican Party was very uncooperative. Although General Butterfield was forced to resign from his post, Virginia Corbin and First Lady Julia Grant were never brought to testify by authorities.[6] As for Gould and Fisk, they were able to use political connections to avoid prison. To quantify the scale of Gould's ploy, estimates suggest his profits netted $12 million, or $450 million in today's dollars. In

essence, the Black Friday Gold Market Crash was one of the earliest instances of major financial fraud.[28]

A point that is often overlooked in examining Gould's fraudulent schemes is the role of government officials whose misconduct cost the country's financial prosperity. These historical examples of corruption provide valuable context for understanding contemporary ethical challenges.[29]

Philosophical Perspectives: Hobbes and Human Nature

The behavior of figures like Gould and corrupt officials raises profound questions about human nature and governance that philosophers have long pondered. This philosophy can be traced back to 1651 when Thomas Hobbes wrote his famous work of literature entitled *Leviathan*. Hobbes was an English philosopher in the 17th century whose ideas about political sovereignty revolutionized the understanding of governmental function. *Leviathan*'s fame can be attributed to an ideology that Hobbes rejected. The claim he rejected was that of Aristotle, who stated that humans are not completely enlightened to their nature until they accept their role as citizens. On the contrary, Hobbes believed that human beings were unfit for political life.

To persuade his readers, Hobbes took them back to a period he called "The State of Nature". In this timeframe, long before kings and queens existed, he wanted his readers to ponder how governments were established. He argued that if humans were left to rule over themselves, there would be anarchical chaos and bloodshed

without a central authority to keep them in check. Hobbes characterized this state as calamitous, and instead of modern weapons, it would involve spearheads and other primitive tools. In his famous conceptualization, the world in a state of nature would have resulted in a bloodbath of human carnage. *Leviathan* hypothesizes that mankind's fear of Armageddon led to the creation of governmental bodies.[30]

In his book, Thomas Hobbes insinuates that people are inherently evil and self-serving. For this reason, he promotes the use of a sovereign governmental entity, because humans cannot be trusted to govern themselves. Throughout his book's narrative of explaining the rationale behind why men require "a coercive power" while other animals do not, Hobbes blames the human race's tendency to perpetually compete for honor and dignity.[31]

Social Contract Theory and Modern Governance

Hobbes argued in *Leviathan* that the key to saving mankind from chaos was a contract. This political theory is known as contractarianism, which states that virtuous acts are those that do not infringe on fair and rational agreements that have been established. Each person surrenders some freedom in exchange for a more secure lifestyle. Citizens of any nation are bound by two types of contracts with their government: explicit and implicit. Explicit contracts are obvious and identifiable.[32]

One instance of an explicit contract is the fiscal duty to pay income taxes once you earn a salary. This mandatory requirement is

highlighted within current tax laws and by employers. In contrast, implicit contracts are more intricately concealed. These contracts are not explicitly agreed to but rather implicitly accepted through citizenship and participation in society. For example, natural-born U.S. citizens never agreed to obeying the current law of the land. The U.S. government does not give them a choice, and yet they still agree to follow this contract.[33]

Observing Hobbes' philosophy at its core, there is no contract that is independently "real" in existence. Contractarianism holds that a mutual agreement of power only materializes when both parties consent to its rules.[32] Correspondingly, the American public must acknowledge the inherent greed of those in power, as it is within human nature. Lawmakers should face the same public shame that history imposed on Gould when they engage in treacherous acts that do not prioritize the country and its citizenry – such as stock manipulation.

Historical Lessons for Modern Reform

While many members of Congress continue to exploit power for monetary gain today, this chapter has demonstrated the lasting nature of such ethical dilemmas, especially through the example of Jay Gould. Early instances of financial fraud expose the modern necessity to create mechanisms to deter and protect against mankind's inherently evil nature, as Hobbes theorized.[31]

The historical examples of Jay Gould's Erie War manipulation and the Black Friday Gold Market Crash illustrate why we need

stronger protection against conflicts of interest today. Just as regulations were eventually established to prevent the market manipulations of the 19th century, we must now enact legislation that prohibits congressional stock trading while in office and requires blind trusts for elected officials' investments.

Beyond specific reforms, these historical cases remind us of the importance of constant vigilance, accountability to the American public, and strict regulatory action against corrupt financial acts in preserving the integrity of our financial and political systems. Lawmakers must pass bills to safeguard against *human nature's* corrupting influence of unchecked powers and advantages, whether on Wall Street in the past or within today's congressional chambers…

CHAPTER

2

ATTEMPTED CONFRONTATION

If we desire respect for the law,
we must first make the law respectable.

– Louis Brandeis, 1856-1941[34]

In the shadow of a burgeoning skyline, millions were made overnight, and dreams are sold on every corner. America was racing towards modernity in the early twentieth century, bringing with it unprecedented financial opportunity—and the need for regulatory oversight. As the banking sector transformed into a more dominant force within the United States, reshaping the economic landscape, the absence of effective regulation created fertile ground for financial manipulation and fraud.[6]

Early Legal Precedents: Establishing the Foundations of Insider Trading Law

Despite the sector's upward trajectory, an urgent need to address insider trading became apparent. One of the earliest catalysts for insider trading legislation emerged from a case involving a man named Francisco Repide. Repide held a significant, privately owned stake in the Philippine Sugar Estates Development Co. In addition to owning a majority of the company's stock, he served as its director and general administrator, giving him near-absolute control over all operations. Repide's overpowering grip over the sugar company soon led to a major scandal.[35]

Eleanor Strong, another shareholder in the Philippine Sugar Estates Development Co., was left in the dark regarding operational changes within the company. This lack of information was especially harmful when the Philippine government offered to buy out the company's ownership of profitable land in the country—a deal that would substantially increase the company's value. Fulfilling his duty,

Repide was responsible for executing all negotiations with the government on the company's behalf. Unbeknownst to Mrs. Strong, Repide had hired a third-party broker to purchase all of her shares. Shortly afterward, the broker outsourced the transaction to another third party, who informed Strong's agent about the deal.

The lawsuit that followed centered on a critical fact: Mrs. Strong was never informed of the Philippine government's interest in buying the land—information that would have significantly increased the value of her shares and likely changed her decision to sell.[36]

Feeling defrauded, Strong claimed that her shares were acquired from her through deception and a breach of loyalty.[37] She told the Philippine court that Repide should have disclosed the government's pending offer. Additionally, Mrs. Strong contended that she never authorized her agent to sell her shares in the sugar company. The Philippine Court ruled in her favor, but the Philippine Supreme Court was swayed into reversing the previous court's ruling. This was because Mr. Repide had no stipulatory duty to disclose his business dealings to Mrs. Strong; therefore, he had not committed any sort of offense.[35]

Strong did not relent and appealed to the U.S. Supreme Court. Since trading on "insider information" had not yet been outlawed, the Supreme Court had to deliberate on whether companies were constitutionally required to disclose nonpublic information. The court eventually ruled that company officials must disclose their identities and insider information when trading company stocks.[6] This landmark 1909 case, *Strong v. Repide*, established one of the earliest

legal precedents protecting shareholders from unethical insider trading practices and introduced the "special facts doctrine" that would influence future securities regulation.

The Rise of Banking Power

Meanwhile, business was thriving in the United States, particularly within the financial services market. Among these emerging banks, J.P. Morgan & Co. was a household name and dominated the financial industry. True to its iconic status, the firm was reorganized and revitalized by John Pierpont Morgan in 1895. The bank's success was attributed to Morgan's affiliation with the Peabody firm and his valuable connections with English bankers. These connections enabled Morgan to secure essential capital for major American industrial corporations, driving their growth. In 1885, Morgan managed to acquire control over two of the largest railroads in America: the New York Central Railroad and the Pennsylvania Railroad.[38]

Until the early 1920s, J.P. Morgan & Co. was regarded as America's unofficial central banking institution. After all, the bank was purposed as the worldwide guardian of the gold standard and halted temporary financial panics – provided that the company profited, of course. But Morgan's outsized influence penetrated deeper than just surrounding American corporations – the bank also exerted power over the government. To illustrate Morgan's power, his bank would regularly speak on behalf of the U.S. government at International Monetary Fund hearings. Benjamin Strong, J.P.

Morgan's CEO at the time, would commonly phone President Hoover before he even sat down for breakfast![6] However, the prosperous era of J.P. Morgan and the American financial sector would soon face a widespread quagmire.

The Great Depression and Its Regulatory Impact

In 1929, J.P. Morgan and other banks were suddenly slammed by an unprecedented global economic recession: the Great Depression. Contrary to popular belief, the Depression was not directly caused by the stock market crash but rather intensified in its aftermath. Surprisingly, the stock market crash and the Depression were two separate events. The economic catastrophe that followed would create the political conditions for the first comprehensive financial regulatory framework in American history.

The causes of the Great Depression remain debated among economists, but several key factors related to financial markets played critical roles. At the time of the collapse, only 3% of Americans owned stocks, and the markets swiftly regained their value by 1930 (albeit they did fall again due to the Depression). Also, despite American banks like J.P. Morgan purchasing a surplus of stocks through loan payments (known as margin buying), it did not alone trigger a global recession.[39]

From a regulatory perspective, we must acknowledge a federal effort one year before the Stock Market Crash of 1929. That push was from the U.S. Federal Reserve, intending to mitigate inflation, leading to higher interest rates. Despite this effort, government officials failed

to recognize that European governments had taken sizable loans from the United States during World War I. These countries struggled to repay their loans, weakening demand for U.S. exports and sparking a downturn in the economy. In due time, a less efficient economy spiraled into further bank failures in 1930 and 1931 and financially depressing levels of deflation. In response, panicked citizens began hoarding gold, further destabilizing the financial system.[40]

At its core, the crisis revealed fundamental weaknesses in the American financial system: a frozen credit system combined with poor banking practices that led to the crisis. Additionally, the Federal Reserve's decision to continue raising interest rates instead of providing liquidity to combat deflation exacerbated the issue.[39]

The New Deal Financial Reforms

In 1933, following the stock market crash, a momentous and relevant confrontation of insider trading crimes occurred in America. Meanwhile, the banking crisis continued with nearly 10,000 banks closing since the crash, and approximately 4,000 failing this year. This period also ushered in a new era of economic policy with the inauguration of President Franklin D. Roosevelt. Roosevelt's administration immediately restricted the reopening of 2,000 banks and reassured Americans that these banks were now safe. One of President Roosevelt's former advisors said, "Capitalism was saved in eight days".[41]

The Pecora Investigation

During Roosevelt's presidency, Ferdinand Pecora, counsel for the U.S. Senate Committee on Banking and Currency, launched a highly publicized investigation in 1933 that exposed how J.P. Morgan provided unfair benefits to certain clients. Formerly an attorney, Pecora authored a book entitled *Wall Street Under Oath*. The 115-page book elaborates on the manipulative stock market practices before and after the stock market collapse in 1929, including J.P. Morgan & Co.[42]

Further investigation led him to conclude that J.P. Morgan unfairly reserved its shares at discounted rates for prominent clients. This scheme guaranteed profit to many of Morgan's wealthy clients, such as former President Coolidge, President Roosevelt's current treasury secretary, and many executives of prominent financial companies and industry-leading corporations. The "insider" component to the ploy was the fact that J.P. Morgan's stock was offered *privately* and only to its *preferred list* of buyers. Pecora sought to publicize Morgan's elitist, economically discriminatory practices, which propped up the rich and locked everybody else out.

Pecora's investigation of J.P. Morgan's shady business dealings uncovered this "preferred list" of elite Americans worthy of the beneficence of J.P. Morgan & Co. Individuals placed on this *list* were given the privilege of buying low and selling high from insider information. All in all, Pecora's successful prosecution of J.P. Morgan fueled public outrage even more, allowing President Roosevelt a political opening to deliver on his promise of economic reform.[6]

The Securities Act of 1933

Within the same month of Pecora's successful exposé, members of Congress were also making swift moves to combat insider traders. Congress passed a bill called the Securities Act of 1933, which focused on protecting investors following the recent financial recession on Wall Street. The bill had two main objectives: to ensure transparency in financial statements and to prevent misrepresentation and fraud in the securities market.[43]

For clarity, a financial "security" is defined as an array of investments, which include stocks, bonds, debentures, investment contracts, and other financial instruments.[44] The bill was a revolutionary piece of legislation, as it was the first of its kind to regulate the buying and selling of securities. Previously, the sale of securities was mainly governed and regulated by state governments; however, the Wall Street Crash of 1929 brought up serious doubts about the adequacy of state-level regulation. The crash shattered American investors' confidence, prompting Washington to take action to restore stability to the holistic economic system.[6]

President Roosevelt and incumbent committee chair Sam Rayburn recognized the dangers of unchecked insider information and saw a clear need for federal intervention to protect ordinary Americans from fraud. At the time, securities information was limited and exclusive, and as a result, citizens were getting tricked into purchasing securities from con artists and swindlers. Roosevelt and Rayburn understood that capital markets function best when *all* investors have the opportunity to comprehend which financial risks they are taking while purchasing securities. This was predicated on the

requirement that corporations make "complete and truthful disclosures" to investors, as President Roosevelt stated.[45] This legislation fundamentally changed the relationship between companies and investors by establishing the "truth in securities" principle that remains a cornerstone of financial regulation today. The bill proved to be effective in restoring investors' trust in securities and other financial assets.

The Glass-Steagall Act of 1933

America reaped economic gains from Roosevelt's reforms, but his journey toward financial reform was far from complete. The same year as the Securities Act, without delay, Congress passed yet another crucial financial bill – the 1933 Glass-Steagall Act. The Act consisted of four sections within the broader Banking Act of 1933. After the Great Depression's many widespread bank failures, livid investors were claiming that banks had engaged in unethical securities activities that ultimately harmed them. Specifically, critics alleged that if the bank owned a bad loan to a bankrupt company or even a nation, it would sell it off in the form of securities to pay back the loan. The scheme left investors with a futile investment that would yield no returns.[6]

The Glass-Steagall Act essentially distinguished commercial banking from investment banking, aiming to curb these abuses. It also established the Federal Deposit Insurance Corporation (FDIC) in June of 1933. The FDIC's goal was to ensure banks' deposit using a sum of money taken directly from banks.[46]

The Act addressed these issues through four main provisions:

1. Section 16 banned commercial national banks from engaging primarily in investment banking.

2. Section 20 barred any member banks from affiliating themselves with investment banks.

3. Section 21 prevented investment banks from conducting commercial banking activities.

4. Section 32 illegalized investment banking officials from serving on the boards of the Federal Reserve member banks.[6]

By creating this separation between commercial and investment banking, Glass-Steagall aimed to prevent the conflicts of interest that had contributed to the financial collapse and protect ordinary depositors from excessive risk-taking.

The Securities Exchange Act of 1934

During his presidency, FDR directly targeted J.P. Morgan by championing the approval of the Glass-Steagall Act in 1933. Roosevelt did this to show he was impartial towards powerful banking institutions and instead, wanted to focus his efforts on protecting the American public. For President Roosevelt, part of his agenda toward a financially secure future required a multifaceted approach, which included signing the Securities Exchange Act of 1934 into law.[6]

This Act was most famous for the formation of the U.S. Securities and Exchange Commission (SEC), with the "mission of protecting investors, maintaining fair, orderly, and efficient markets, and facilitating capital formation.[47]" Congress sought to restore public trust in the financial markets following the Wall Street Crash of 1929. To protect investors, the Act mandated the disclosure of private or insider information by anyone attempting to acquire over 5 percent of a company's securities. This newfound information allowed skeptical investors to fully comprehend and deliberate on whether to sell their stake or not.[48] The establishment of the SEC created a permanent watchdog agency with broad enforcement powers to regulate securities markets, prevent fraud, and ensure fair dealing. Congress' establishment of the SEC created market stability in the U.S. and encouraged investors to participate more in capital markets.[6]

Landmark Legal Cases in Insider Trading Law

Nearing the end of FDR's unprecedented twelve-year presidency in 1945, the U.S. had reshaped its economic landscape for the better.[49] However, despite legislative advancements such as Rule 10b-5 and other SEC regulations, insider trading remained a persistent issue. Despite Roosevelt's efforts, just thirty-five years down the road; financial fraudsters were still alive and well.

Chiarella v. United States (1980)

The 1980 case of *Chiarella v. United States* represented a significant test of insider trading laws and revealed continued challenges in

enforcement. The defendant brought to trial was Vincent Chiarella, a markup man employed by a financial printer. Chiarella dealt with announcements of corporate takeover bids. He inferred the names of the target companies based on information within his announcements. Armed with this "insider" knowledge, Chiarella failed to disclose he bought stock in the company and sold his shares right before takeover events became public.[50]

Working methodically, he profited slightly more than $30,000 from his expertly placed trades. The SEC quickly caught on and promptly launched an investigation into Chiarella's trades. Investigating deeper into Chiarella's affiliation with Pandick Press, his employing company, SEC officials persuaded him to enter a consent decree.[51] A consent decree is a legally binding settlement agreement formed and enforced through court supervision.[52] The SEC promised benefits for Chiarella, which remained contingent on him returning his profits to parties that sold their shares. A few months down the road, Chiarella was indicted on seventeen counts of criminal securities fraud. SEC officers alleged he violated §10(b) of the Securities Exchange Act of 1934 and Rule 10b-5.

According to the 1934 Act, "connection with the purchase or sale of any security" of "any manipulative or deceptive device or contrivance in contravention of such rules and regulations as the SEC may prescribe" is prohibited. The promulgation of Rule 10b-5 was the illegality of any individual to "employ any device, scheme or artifice to defraud … in connection with the purchase or sale of any security.[51]" Desperate to exploit a loophole, Chiarella rebutted that his indictment should be dismissed by the court. He claimed that since the

information that he leveraged was from an outside company, he never technically traded on *insider* information. Moreover, Chiarella demonstrated how he was never the sellers' fiduciary, and thus, had no mandatory obligation to disclose his privileged information in his stock trades.

Much to Chiarella's misfortune, the U.S. District Court did not buy into his reasoning, and his case was not dismissed.[50] The petitioner was convicted at his trial, and his ruling was reaffirmed by the U.S. Court of Appeals for the Second Circuit. But Chiarella would have better luck… particularly with the U.S. Supreme Court. His conviction was reversed in a landslide 6-3 decision, a relieving victory for the con man.[51] The Supreme Court stated that making trades on insider information in and of itself was not sufficient cause to prosecute under liability under anti-fraud provisions. In addition, they ruled that Chiarella had no duty to target shareholders; as a result, proving his innocence. Commenting on the decision, Chief Justice Warren Burger opined that Chiarella's conviction would have been sustained if the defendant had "misappropriated" backdoor intel from his employer and unjustly used it for his financial gain. Burger's dissension regarding "misappropriation" would later become the foundation for insider trading cases in the years to come.[6]

In response to the *Chiarella v. United States* ruling, the SEC expanded the promulgation of Rule 14e-3 from the Exchange Act. Attempting to restrict insider traders even further, the SEC explicitly outlawed the trading of securities based on material insider information related to tender offers, provided the trader knew the information originated from an insider.[53] The role of the expansion

was to eradicate the *Chiarella* duty requirements in the context of tender offers – a strategy insider traders viewed with special appeal.[6]

Dirks v. SEC (1983)

In 1983, the liability of a "tippee" within an insider trading investigation was challenged in the Supreme Court case *Dirks v. SEC*.[54] A "tippee" is an individual who receives insider information regarding a company from a "tipper"—someone with inside knowledge.[55] The pivotal trial involved Raymond Dirks, a stock analyst who was granted access to nonpublic information on fraud occurring at the Equity Funding Corporation of America. After looking further into the tipper's accusations, Dirks notified his clientele and investors. This prompted many investors to sell their shares in the corporation.[56] Dirks approached the Wall Street Journal; however, they declined to publish a story due to fear of committing libel.[57]

The SEC alleged that Raymond Dirks was a perpetrator of aiding and abetting securities violations. Subsequently, Dirks was convicted of insider trading by the U.S. Court of Appeals. Similarly to the previously mentioned circumstances with Chiarella, Dirks appealed to the U.S. Supreme Court for a way out.[56]

It was now the Supreme Court's duty to determine whether his protest had any merit… The U.S. Supreme Court predicated that a tippee's liability on the motivations of the tipper was solely from an obligation for the tippee to publicize or abstain whenever the tipper was in pursuit of an inappropriate profit from the intel being

provided.[6] In the end, the Supreme Court ruled he was innocent from a 6-3 ballot since Dirks had no mandatory requirement to refrain from using his insider information. This was primarily because he never once breached his fiduciary duty to shareholders, nor did he attain the information through illegal methods.[56]

Once again, another case exposed gaps in securities regulation, forcing the SEC to refine its approach. Adjusting their insider trading laws accordingly, the SEC established the "personal benefits test," more commonly called the Dirks test. The Dirk's test was a new standard imposed by SEC administrators for tippees who receive and act on nonpublic information. The determinant for liability of insider trading was now premised on two main criteria: one, did the individual in question break the company's trust? And two, did the individual do so knowingly?[58] The Dirks test called out insider traders for acting out of personal interest and benefit, consequently leading to successful prosecutions in the future.[59] This refinement in legal doctrine proved valuable, the Dirks test was utilized in numerous subsequent court hearings like *U.S. v. Newman* and *U.S. v. Salman*. Since the legal clarification of "personal benefit" was considered, prosecutors enjoyed a much easier pathway to conviction.[58]

The 1980s: Wall Street Scandals and Legislative Response

The 1980s marked a period of unprecedented financial scandals and subsequent regulatory responses. The "decade of greed," as it came to be known, featured high-profile insider trading cases that shocked the nation and prompted Congressional action.

The SEC's test was upheld in 2014 when a billionaire's portfolio manager was taken to trial and effortlessly proven guilty of insider trading. The tycoon called to the spotlight was Steven Cohen, a man who hired Mathew Martoma to manage SAC Capital Advisors, his hedge fund. Martoma, who was 39 at the time of his conviction, was found guilty of leveraging insider information he received from doctors conducting a pharmaceutical trial in 2008 for an Alzheimer's medication. Martoma was convicted because of his "well-timed" trades in a biotechnologies company's stock. Prosecutors, disgusted by the greed of Martoma, attempted to showcase how he netted gains of $276 million for SAC – and they did not struggle to prove it either. Martoma was the embodiment of fraud, even throughout his educational life. Federal prosecutors were given access to sealed documents regarding Martoma's expulsion from Harvard Law School in 1999. Reflectively, he had fabricated his academic transcript and attempted to cover his transgression by concocting phony evidence. Prosecutors also wanted to point out the perplexity of Martoma's reaction to the FBI showing up at his Florida estate in 2011… he immediately fainted! The only explanation they claimed was his conscious awareness of guilt, although Judge Gardephe quickly shot down their request to discuss it in court.[60] Holding prospects for a potential acquittal, his lawyers appealed on the premise that the tipper, a famous doctor at the University of Michigan, was not compensated for disclosing insider data with the manager. In spite of their appeals, evidence arose which stated that at least one of the tippers was paid off with $70,000 in "consulting fees" for their insider intel. Unlike previous cases where legal loopholes allowed insider

traders to escape conviction, Martoma's actions met the Dirks standard of personal benefit, and his conviction was eventually upheld.[58]

The Insider Trading Sanctions Act of 1984

Following the landmark decisions in Chiarella and Dirks, Congress aimed to strengthen penalties for insider trading violations. In order to achieve more stringent trading penalties for the SEC, lawmakers passed the Insider Trading Sanctions Act of 1984. The bill was simple really. It granted the SEC authority to claim civil penalties against individuals who commit insider trading, promoting more order and control over sketchy traders.[61] Because of the Act, the SEC is also permitted to seek disgorgement of profits, essentially forcing the convicted party to give up any profits made from their crime. Additionally, defendants can face penalties counting three times the value of the profits gained, or the amount evaded from a monetary loss. Finally, the cherry on top of a prosecution sundae, criminal penalties were raised from $10,000 to $100,000. It is important to recognize, however, that the Insider Trading Sanctions Act of 1984 does not set the scope of legality surrounding insider information and the trades based on it.[6] Either way, the bill had served as an effective weapon of deterrence. After its enactment, the SEC has been more adamant about enforcing insider trading restrictions and is a great consequentially used weapon within the U.S. government's "anti-insider trading arsenal".[62]

The Wall Street Trio: Levine, Boesky, and Milken

With rapidly adaptive legislation, one would conclude that insider trading scandals would dwindle. For three Wall Street titans, that wasn't the slightest deterrence. Throughout 1986, Dennis Levine, Ivan Boesky, and Michael Milken had been exposed for orchestrating some of the most egregious insider trading scandals in history.[6] Before understanding the magnitude of the three men's crimes, it is crucial to understand who they were and their unique circumstances.

At the time of his arrest, Dennis Levine was a 33-year-old investment banker who regularly wined and dined with the crème de la crème of New York City. Levine also earned a lovely salary – over $1 million annually (not accounting for bonuses). The banker indulged in a luxurious lifestyle, boasting an ostentatious bright red Ferrari, as well as a swanky apartment in the Upper East Side of Manhattan. To every man's envy, Levine was happily married to his college sweetheart and was raising one son. He had even more prosperity in his life to savor, as his wife, Laurie, was pregnant with his second child. But for Dennis Levine, his lust for wealth simply got the better of him.[63] Sentenced to two years in prison and a fine of $362,200, Levine was found guilty of scandalous activities as the managing director of Drexel Burnham Lambert Inc.'s mergers and acquisitions division. U.S. authorities caught a whiff of Levine's insider trading activities involving a whopping 54 companies from 1980 to 1985. Seeing no way out, Levine sought to be as cooperative with the feds as possible. The banker was arrested in May and just a month later, on June 5th, confessed to charges of securities fraud, perjury, and tax evasion, and attempted to reconcile by returning

$11.5 million in profits made from insider trades. Arthur Liman, Levine's attorney, pleaded for lenient sentencing per his "outstanding cooperation". With little morale left, Levine watched as Liman made his case to the courtroom: "He's broke. He's bankrupt. Everything is gone. For the rest of his life, he is literally going to be working to pay for his crime."[64] Dennis Levine's guilty plea for $12.6 million in insider trading profits, marked the start of exposing Wall Street vipers that year.[6]

Levine's case led investigators to Ivan Boesky, a far bigger player in Wall Street's insider trading schemes. Markedly, Boesky reportedly preached to graduates at the Haas School of Business at UC Berkeley that greed was very "healthy". Some believe Boesky was the man who inspired the character Gordon Gekko in the iconic 1987 movie *Wall Street*. As if he wasn't already interesting enough, Boesky was commonly compared to Jay Gatsby, a fictional character from *The Great Gatsby*. Both men went from humble Midwestern origins to the elite East Coast financial sectors, basking in the glory and prestige of an affluent life.[65] An unorthodox stockbroker, Boesky's fellow co-author for his book Empires of New York, described the trader as a "classic outsider" who "didn't do well in school," a very odd trait for an executive of his level.[66] By 1986, Boesky had worked his way up the corporate ladder. Now reigning as an apex predator of Wall Street, he ran his firm as a preeminent arbitrageur.[67]

An arbitrageur is a trader who exploits price differences of the same asset in different markets, buying low in one market and selling high in another. In other words, they aim to profit from the same asset being priced higher in another market while buying assets at a

lower price and flipping them.[68] Recognizing a surge of opportunity from the 1980s takeover boom, Boesky was dealt the perfect cards to start extracting profits. Then, by leveraging corrupt officials and colluding, he was able to derive insider information to make manipulative stock trades on Drexel's behalf.[67] It wasn't long before the SEC caught on, and when they did, Boesky was fined a $100 million penalty for his unscrupulous deeds. On a positive note, Mr. Boesky was spared a three-year prison sentence by the judge and U.S. Attorney Rudolph Giuliani. There was one caveat, however. He would have to gather evidence against his partner in crime – Michael Milken.[69]

Michael Milken was the mastermind behind Drexel's "junk" bonds scandal. Before his fall from grace, the investment banker turned felon dominated the junk bond market in the 1980s.[70] Junk bonds, despite their name, are high-yield, higher-risk bonds issued by companies with lower credit ratings. In reality, these particular types of bonds were and still are extremely popular in the U.S. today. U.S.-based companies took out nearly $300 billion in junk loans in just 2014 alone. That sum equates to approximately 5% of all lending carried out that year. Contrary to common belief, these junk bonds are typically synonymous with bankers with high-yield profits. Essentially, the higher the risk a banker takes with a company, the greater the interest rate he or she can charge.[71] The only major drawback was the vital need for alleviating high risk, something Milken was a master at. Working as the head of Drexel's High-Yield Bond Department, he would often land high-profile clients such as Ivan Boesky. Interestingly, his five charges of white-collar crime were

not concerning Boesky's insider trading schemes. Mr. Milken was inclined to plead guilty to five criminal offenses, which consisted of two distinct themes. First was his unlawful commitment to client satisfaction. His legally impermissible actions consisted of guaranteeing clients against losses and assisting clients with evading regulations, all of which showcased his dedication to customer satisfaction. Second, and somewhat unexpectedly, his crimes were not directly tied to junk bonds, his area of expertise. Instead, he committed technical violations of SEC guidelines. Examples of these violations included intricately placing transactions to evade taxes and altering securities prices for his clientele without disclosing them to the SEC.[72] Even though Milken's financial crimes were technically minor, the SEC slammed more severe charges against him. In 1990, Milken was sentenced to 10 years in prison and a $600 million fine but was later reduced to 2 years for his newfound cooperation. This move was executed to deter more bankers from committing fraud on Wall Street.[73] Unbeknownst to him, philanthropy would buy him a lot of favors – even from the President of the United States. In February 2020, the Trump Administration pardoned Mr. Milken, with President Trump citing his "incredible job" regarding his donations to cancer research. "He's done this, and he suffered greatly," President Trump said. "He paid a big price; paid a very tough price.[74]" Milken graciously accepted the president's pardon and continued his repentance to society through his cancer research foundation.[73]

The Insider Trading and Securities Fraud Enforcement Act of 1988

Yet again, the SEC would be forced to level up its stringency on insider traders. On November 19, 1988, incumbent President Ronald Reagan signed the Insider Trading and Securities Fraud Enforcement Act of 1988 (ITSFEA) into law. Congress' bill was a direct result of the recent rises in high-profile insider trading convictions and the trending increase of monetary value in stock trades.[75] Unlike previous attempts at regulating trades as mentioned above, the ITSFEA launched a bounty program, providing the SEC with authorization to reward individuals who inform or aid the agency in investigating. Similarly to the Insider Trading Sanctions Act of 1984, the ITSFEA heightened the penalty to take adequate steps in deterring insider traders. The Act consisted of more detrimental civil penalties towards parties who fail to prevent insider trades from occurring, increasing maximum jail limits from 5 years to 10 years, and criminal fines climbed to $1 million for individuals and $2.5 million for organizations.[6]

United States v. O'Hagan and the Misappropriation Theory

Keeping all of the government's ameliorations in mind, the public was eager to see if they would have a tangible impact on how insider trading laws were enforced. The 1997 case of *United States v. O'Hagan* provided a pivotal moment by solidifying Justice Warren Burger's claim regarding the "misappropriation theory" of insider trading.[6]

James Herman O'Hagan was a partner at the law firm of Dorsey & Whitney, entrusted with representing the firm in hopes of a potential tender offer for the Pillsbury Company's equity or common

stock.[76] A tender offer is a public bid to purchase shares from existing stockholders at a specific price, usually above market value, to acquire a significant ownership stake in a company.[77] During the business dealings with the Pillsbury Company, O'Hagan discovered through his law firm's insider information channels that the company was being acquired. At the time of the case, in 1997, Pillsbury was a publicly traded company.

Realizing the value of this nonpublic knowledge, O'Hagan immediately proceeded to purchase call options.[78] Call options give investors the right to buy stock at a predetermined price before a specific date—their value increases when the stock price rises. When an investor buys call options, that investor is hoping the underlying value of the asset increases in price. Share prices can potentially increase for a multitude of reasons, but one of the most apparent is the duration of company acquisitions.[79] This strategy, common in acquisitions, was a calculated gamble — but for O'Hagan, it paid off spectacularly. His trades netted him a jaw-dropping $4.3 million.[78]

Unfortunately for him, the SEC and the Department of Justice caught him in the act and followed up with an investigation using fellows like Ivan Boesky among others. Prosecutors indicted him on 57 counts of misappropriation to make his trades, federal mail fraud, money laundering, securities fraud, *inter alia*. Explicating legal specificities, O'Hagan violated §10(b) of the Securities Exchange Act of 1934 and SEC regulations of Rule 10b-5 and Rule 14e-3(a).[76] Later, the jury reached a verdict finding Mr. O'Hagan guilty of all 57 charges against him, convicting him under the misappropriation theory of insider trading.

Disappointed with the verdict, O'Hagan protested the decision to the Eighth Circuit Court of Appeals. In a matter of weeks, the tables had turned, and the appellate court overturned the district court's verdict. The rationale the court provided for his innocence was technically nuanced. Technically speaking, Mr. O'Hagan never fits the criteria to be prosecuted as an "insider". They argued that since he never actually worked at the Pillsbury Company, he never owed a fiduciary duty to the corporation. Rather, he was obligated to represent his law firm, which was on behalf of the acquirers, not the targets. So technically, the lawyer had no relation with the target and therefore had no duty to fulfill towards anyone at the company. James O'Hagan figured after the court's reversal that he was off the hot seat. SEC officials, however, were very displeased with the overturning of his case. Their goal was to enforce the misappropriation theory to combat insider trading loopholes.[78]

Famously, the U.S. Supreme Court publicly endorsed the misappropriation theory of insider trading by reversing the previous ruling. The Court held that the person misappropriating, regardless of having no obligation to the company whose stock he traded, was still participating in fraudulent securities trading. The Justices ruled it was simply a different form of fraud – conning the party whose information was stolen, inherently breaching his duty to the source. The Court warranted that it was O'Hagan's breach of this duty, constituting his level of "deception" in order to press federal charges. And thus, his previous fate would come back to haunt him. After relishing a short-lived victory, James O'Hagan would be sentenced to 41 months in federal prison and was convicted again on all 57 counts

alleged by the SEC.[6] This case cemented the misappropriation theory as a cornerstone of insider trading enforcement, closing a significant gap in regulatory oversight and broadening the legal definition of insider trading.

Plain English and Regulatory Transparency

One reoccurring theme may have become evident throughout this chapter: For the most part, insider trading cases have been centered around high-profile companies or individuals. It was a year after the misappropriation theory case and analyzing complex legal jargon, that the SEC realized it was time for change. In 1998, the SEC wanted to help ordinary investors in making informed decisions about complex enterprises. To achieve this, they established a requirement for simplistic English and concise sentences in prospectuses and filings.[80] The requirement mandated that clear sentences, ordinary vernacular, active voice, and absolutely zero legal language or highly technical business terms were used. The intent was to protect retail investors from being tricked into terms and or conditions they would never accept to in the U.S. securities market.[81]

Financial Deregulation: The Repeal of Glass-Steagall

With the global economy gearing up for the twenty-first century, the U.S. would be forced to prepare for it too. On November 12th, 1999, President Clinton repealed President Roosevelt's Glass-Steagall Act. Clinton, among other lawmakers, believed that Roosevelt took appropriate action during the Great Depression, but the policy could

no longer force a distinction between investment and commercial banks. This movement started during the 1990s when a bull market arose in America.[6] In financial terms, a bull market describes a sustained period where security prices are rising or expected to rise, creating optimism among investors.[82] With this rising bull market, commercial banks were dying to dip their toes into high-margin businesses such as underwriting trending technology company stocks. The crux of the issue was, that the Glass-Steagall Act prohibited commercial banks from taking speculative risks to avoid a recession in the United States' past. These banks were capped at 10% of earnings derived from investments.[83]

To overturn President Roosevelt's previously signed legislation, the Gramm-Leach-Bliley Act was passed. To summarize, the Act eliminated all the restrictions in the Glass-Steagall Act and amended the laws to allow banks, brokerage houses, and insurance firms to merge.[84] The newly introduced law eradicated all restrictions on commercial banks acquiring investment banks and vice versa.[6] While the act aimed to modernize the financial sector, some economists and financial speculators suggest that this Act triggered the upcoming crisis.[84]

Regulation Fair Disclosure (2000)

SEC officials were still pursuing their quest to fine tune an economy welcoming to investors from all walks of life. That's why in 2000; they issued Regulation Fair Disclosure (Reg FD) to bridge the informational gap between institutional and retail investors. The

regulation combats a specific type of insider trading – selective disclosure. It holds that, whenever an issuer discloses material insider information, they are mandated to also disclose it to the public. The required timing of the disclosure, as well as other details, are dependent on the circumstances and the context of the rule's implications.[6] Reg FD's goal is to ensure transparency and trust for *all* investors. The regulatory change was made in response to past instances of issuers disclosing warnings of earning results and insider information to institutional investors and analysts, unfairly locking out retail investor communities.[85] By mandating that all market participants receive material information simultaneously, Reg FD created a more level playing field and reduced the information advantage previously enjoyed by institutional investors.

The Sarbanes-Oxley Act of 2002

Insider intel is, at its core, a game of access. Recent corporate scandals in the early 2000s enlightened Congress about this aspect of "access". Therefore, legislators collaboratively agreed to pass a bipartisan congressional bill to solve this issue: The Sarbanes-Oxley Act of 2002 (SOX). Named after its sponsors, Senator Paul Sarbanes and Representative Michael Oxley, the Act was the defense against accounting scandals with major firms.[86] Between 2001 and 2002, Enron, Xerox, Adelphia, WorldCom, and Tyco were among a plethora of companies being slammed by media outlets for repeatedly violating proper executive protocol and forced by the U.S. government to conduct multi-billion-dollar restatements.[6]

Similarly to previous legislation, SOX's purpose is to protect shareholders against misrepresentations of data and securities fraud surrounding financial statements. The provisions of SOX entail that issuers ensure that their financial metrics presented are truthful and that an independent 3rd party entity has validated its accuracy. The Act also mandates that auditors create internal controls and reporting methodologies for their companies. As for record-keeping, there are three rules listed in SOX. The first rule involves illegal destruction and falsification of records. Additionally, the second defines the retention period for the storage of records.[87] The Act emphasized that companies must disclose "on a rapid and current basis" any discovered changes in business operations or financial performance. In a Pre-SOX world, insider trading information was scarce or futile. Since the Act's passing, however, the third and final rule is that companies must preserve business records, including electronic communications.[6] Through issuing SOX, four foundational principles were reinstated for all investors to enjoy: Corporate responsibility, stricter accounting standards, increased protections, and harsher penalties for fraudulent stock traders.[87]

High-Profile Cases: Martha Stewart

A few years later, one of America's most recognizable television personalities, Martha Stewart, was found guilty of insider trading. This came as a shock, as the entrepreneurial icon had built a sterling reputation and experienced wild success through her personal lifestyle brand. While her case was not the largest in terms of financial impact,

it became one of the most publicly visible examples of insider trading prosecution.

Born to a traditional Polish American family in Jersey City, Martha's original surname was Kostyra. Her parents instilled values of hard work and ambition, a lesson that would later be tainted in the wake of her conviction.[88] When she was younger, Stewart was not exactly sure about her career of choice. Nevertheless, her uncertainty did not stop her from excelling as a child. By three years of age, she was gardening, and it wasn't long after that she attained basic skills in cooking, baking, canning, and sewing.[89] Throughout her schooling, Martha made all A's and demonstrated such academic prowess that Barnard College in New York City offered her a generous scholarship. For that reason, she began her undergraduate education hoping to study chemistry at Barnard. As can be seen, Stewart's uncertainty got the better of her again, and she swapped majors to art and then history. Wrapping up her sophomore year, Martha met her soon-to-be husband, Andrew. After marrying young in 1961, she took a year off and then graduated with her two degrees in history and architectural history. Still, in search of a meaningful career, Stewart looked to modeling. Enjoying a surplus of appearances, she was in advertisements for Breck, Clairol, Lifebuoy Soap, and Tareyton cigarettes, all household brands. However, Stewart's career had to be put on hold, when she had given birth to her daughter Alexis in 1965.[88] After attending to her maternal duties, Martha Stewart resumed her career as a stockbroker in New York City. Seven years later, she got fed up with the cutthroat world of finance, so she moved to Westport, Connecticut. It was then that she realized that

she should reunite her career with her fond childhood. Stewart started her first gourmet food shop catering business, which she ran from her basement. Leveraging her knack for business and personality, Stewart published books and starred on cooking shows, hoping to grab a share of the media industry.[90]

Eventually, Martha Stewart realized her fast-paced growth was worthy of being publicly traded. So, in 1999, she facilitated an initial public offering (IPO) for her life's work, Martha Stewart Living Omnimedia. Fortunately for her, the IPO raised a grand total of $1.9 billion, making the media mogul a self-made billionaire.[91] The success of her business empire made her subsequent legal troubles all the more surprising.

With such success and wealth, one might wonder why she would risk everything for a relatively small insider trading transaction. According to Martha Stewart, on the day of her sentencing, she commented, "Today is a shameful day. It's shameful for me, and for my family, and my beloved company." Stewart also claimed that her "personal affair" had been blown out of proportion and that she had "been choked and almost suffocated to death during that time".[92]

Long before her trial, Stewart had partaken in an insider trading scheme that would jeopardize her career. Near the end of 2001, she received a tip for one of her investments. Her former stockbroker's assistant, Douglas Faneuil testified that her broker ordered him to notify Ms. Stewart that ImClone System's head executive was selling his shares on December 27, 2001.[6] This was due to her stockbroker, Peter Bacanovic, uncovering that the Food and

Drug Administration (FDA) would reject reviewal on ImClone's cancer drug. With this dilemma in her subconscious mind, Stewart could not stand sitting back and watching her portfolio take a dive. After all, she had invested in 3,928 shares of ImClone stock and was not in the mood to let her net worth take a nosedive on vacation to Mexico. Therefore, when Bacanovic contacted Stewart right after the CEO and his family had sold their shares, her stock was sold just ten minutes later.[90]

The SEC was suspicious that the elite group of investors exquisitely experienced perfectly timed sales. It meant something was murky. After making $227,000 from her insider trade, Martha told investigators that she instructed her stockbroker beforehand to sell her shares in ImClone if they fell below the threshold of $60 per share. Unfortunately for her, the star witness was Bacanovic's assistant, Mr. Faneuil, and he was put to the stand to testify *under oath* about Stewart and Bacanovic's inappropriate trades.[6] Consequentially, the jury found her guilty of four counts of obstructing justice and perjuring herself to investigators. Receiving the minimal penalty, Stewart was sentenced to five months in prison and five months of house arrest for her transgressions in 2004.[93] Later, she was sent to FPC Alderson, a minimum-security prison nicknamed "Camp Cupcake". Stewart also told *The Washington Post* in an interview, "Daily interactions with the staff and inmates are marked by fair treatment and mutual respect." the lifestyle icon was hardly rotting in prison, as her adoring fans sent over 15,000 emails in just her first month at FPC.[94]

After Martha Stewart paid her legal debts, she wanted to be compromised through the medium of settlement for the damage the SEC had inflicted on her company's reputation.[6] And rightfully so, her reputation as a businesswoman was a primary source of strength. Eerily, nineteenth-century German philosopher Friedrich Nietzsche once said, "A bad conscience is easier to cope with than a bad reputation.[95]" The SEC and Stewart engaged in intense negotiations over her alleged insider trading scandal. Repeatedly insisting on maintaining her reputation, Stewart finally gave in to paying $195,000 fine as a penalty – pocket money for a woman of her financial status. As a result of her settlement, she was enabled to neither admit nor deny that any wrongdoing occurred on her behalf.[6] Despite the relatively modest financial penalties, Stewart's case demonstrated that even high-profile celebrities were not beyond the reach of insider trading enforcement.

SEC Challenges and the Financial Crisis

The U.S. Securities and Exchange Commission had jumped through many prosecution hurdles, but what happened in 2005, would prove to be devastating for the agency. Due to the poor job the SEC had done preventing financial crimes in the past couple of decades, their enforcement division was struggling. A decline in enforcement abilities raised concerns over the SEC's ability to deter securities crimes and safeguard investors. By 2006, the SEC reported a 9% decline in enforcement cases due to stringent budgeting limits. In turn, the budget cuts resulted in staff getting laid off, resigning, or leaving in search of other work.[96] The employee turnover rate was at a

five-year high. Before the resource cuts, enforcement groups were typically composed of fifteen attorneys. During the period of 2005 to 2008, prosecuting teams were only made up of seven or eight lawyers. To make matters worse, the total sum of lawyers capable of investigating cases decreased by 10%, from 654 in 2005 to 594 by 2008.[6]

In this period, the SEC was experiencing a huge crisis. Not only was their ability to pursue fraud and financial misconduct hampered, but it was also even harder to facilitate rigorous enforcement practices. The timing of the SEC's inadequacy of resources was as inconvenient as ever. Financial markets were shifting to become increasingly complex, and there was an urgent necessity for regulatory supervision from the SEC.[96]

This regulatory weakness would soon be tested by the most severe financial crisis since the Great Depression. The global community was unaware of the imminent Great Recession which would last from 2007 to 2009. The U.S. economy took a hit, and the U.S. GDP declined by 0.3% and 2.8% in 2008 and 2009 respectively. Many Americans were also temporarily out of jobs, due to the national unemployment rate rising to 10%.[97]

The Mortgage Crisis and Market Collapse

To fully understand the vulnerability of the SEC and economy, we must first elucidate on what mortgages are, and most importantly, how they work. A mortgage is a loan used to purchase real estate where the property itself serves as collateral. Mortgages are certain

types of loans where housing consumers take out hundreds of thousands of dollars in order to purchase a home. The contractual requirements are that borrowers agree to pay fixed monthly installments over a predetermined duration of time.[98]

The reason why mortgages were the crux of the recession was due to events six years prior. 2001 was a revolutionary yet detrimental year for the United States. While being interviewed by *The Wall Street Journal*, legendary investor Warren Buffett explains the recession with an interesting analogy. "You can imagine the American economy as an economic train, moving down a track that has no ending. And it picks up cargo and passengers. As we go along there's 330 million of us now and there were only four million in 1790, and our farms are incredibly more productive, and we have 75 million houses, and we had a few huts then and we have great universities and all these things. So, we're just constantly moving more and more cargo and passengers along. And occasionally, that train is going to get derailed.[99]"

For that reason, when the dot-com bubble imploded, there was a massive adoption of personal devices and unprecedented expansion of technological sectors.[100] On the other hand, 2,977 people were tragically killed in the September 11th terrorist attacks.[101] This national calamity trounced over the U.S. economy. To mitigate this disaster, the government responded by lowering interest rates to revive the economy. The Feds kept interest rates historically low until mid-2004. This, coupled with federal incentives to own a home triggered an uncontrollable expansion of real estate ownership.[97]

At the same time, the total national mortgage debt was skyrocketing due to subprime mortgages and mortgage-backed securities. This can be attributed to the newfound confidence in lenders, with credit-rating agencies giving these loans AAA ratings, pronouncing mortgage debt as a secure investment. Rapid price increases driven by irrational purchases spawned a housing bubble. A corroboration of this is when the Federal Reserve raised interest rates attempting to control inflation rates. And as all bubbles do, this one was waiting to pop. Middle class Americans were simply failing to pay for their ballooning mortgages, and immediately started defaulting en masse.[102] To clarify, defaulting on a loan means the loanee has missed one or more payments or terminated their payments entirely.[103] Without delay, a surplus of homes was placed back on the market, the only problem being nobody could afford them. All of sudden, due to a plummeting demand, prices became dirt cheap. Simultaneously, powerhouse financial institutions halted purchases on subprime mortgage loans, and the subprime lenders were trapped with awful loans.[102]

It didn't take long before over-leveraged banks collapsed. A globally leading investment bank at the time, Bear Stearns collapsed in 2008. Desperate to yield some value, the company's board decided to sell to J.P. Morgan Chase for $10 per share, not even a fraction of its original price. Bear Stearns collapse generated financial repercussions, as the investment banking industry was financially eroding.[104] Things came to their lowest point when Lehman Brothers declared bankruptcy. Provided that Lehman Brothers were the fourth-largest investment bank in America, a financial pandemic emerged. Countries

around the world, especially European ones, bled trillions. As for the United States, 8.7 million jobs were lost due to the Great Recession; Further contributing to the loss of $19 trillion from households in net worth values.[97]

Congressional Trading During the Crisis

Rigorous monetary policies were set in motion by the federal government. These policies were controversial, as some claimed the recession lasted longer as a result of the actions taken, and it positioned the economy in a vulnerable state for the volatile future.[97] The danger of this situation is best symbolized by a quote from the 40th U.S. President Ronald Reagan. "The nine most terrifying words in the English language are, 'I'm from the government and I'm here to help.'" President Reagan would often preach this phrase because he believed that government intervention tends to be ineffective, and rather harmful to citizens. His quote was based on the notion that the government's goals may not always align with the nation's goals.[105]

Similarly, the American public were shocked to learn that while the economy was in crisis, some elected officials appeared to be using their privileged positions for personal gain. While most Americans were on a sinking ship, elected officials pathetically rushed to their lifeboats. Members of Congress' scandals came to light when investigations and reports alleged that a number of them bailed out on stocks and allegedly used their positions in Congressional Financial Service Committees to pry open information about the upcoming state of the economy in 2008.[106] Essentially, the Great Recession was

a seminal event, since it would later be examined to expose the infestation of corruption among government officials, especially Congress members. In a state of rage and disgust, the people of America demanded change to current privileged information laws…

The Ongoing Evolution of Financial Regulation

The history of financial regulation in America reveals a constant cycle of crisis, reform, and adaptation. From the early precedent established in *Strong v. Repide* to the comprehensive New Deal reforms and through the corporate scandals of the early 2000s, each era has contributed to the complex tapestry of laws and regulations governing insider trading and securities markets.

This historical perspective provides crucial context for understanding contemporary debates about congressional stock trading. As we've seen throughout this chapter, insider information has always been a valuable commodity, and those with privileged access—whether Wall Street financiers or elected officials—have frequently been tempted to exploit it for personal gain.

The allegations of congressional insider trading during the 2008 financial crisis represent the continuation of a long-standing problem in American financial history. The public outrage that followed reflects Americans' enduring belief that markets should be fair and transparent, and that no one—especially those entrusted with public service—should enjoy unfair advantages based on privileged information.

In the next chapter, we will examine how these historical lessons apply specifically to congressional trading practices and the legislative efforts to address them.

CHAPTER

3

THE STOCK ACT

Power concedes nothing without a demand.
It never did and it never will.

– Frederick Douglass, 1818-1895[107]

The 2008 financial crisis not only devastated the American economy but also exposed troubling questions about whether members of Congress had used privileged information to protect their personal finances while ordinary citizens suffered. This chapter examines how public outrage over congressional trading practices ultimately led to the passage of the Stop Trading on Congressional Knowledge (STOCK) Act in 2012 — the first substantial legislative attempt to address congressional insider trading.

Fiduciary duty represents a legal obligation to act in the best interest of another party. For elected officials, this concept is particularly significant as they hold a position of public trust and are expected to prioritize the interests of their constituents over personal gain. Congressional insider trading represents a profound breach of this trust for several key reasons: First, lawmakers have unique access to market-moving information through classified briefings, regulatory discussions, and advance knowledge of legislation. Second, they often directly influence the very policies and regulations that affect market outcomes. Finally, unlike corporate insiders who face strict disclosure requirements and trading restrictions, members of Congress historically operated with minimal oversight of their financial activities. This asymmetry created a concerning double standard where those entrusted with creating fair market rules could personally profit from information unavailable to ordinary investors.

Congressional Trading Scandals: Catalysts for Reform

By 2010, public trust in Congress had reached historic lows as evidence mounted that some legislators may have used nonpublic information to trade stocks during the financial crisis. From an ethical standpoint, no sensible American would consider it justified when members of Congress traded their personal stocks based on privileged information during the 2008 crisis. Although several lawmakers were implicated for their part in trading on nonpublic information, the exact number involved remains difficult to determine. Either way, numerous senators and representatives were accused of profiting before the recession, albeit little to no members of Congress have ever been prosecuted or found guilty of insider trading based on government knowledge as of 2023.[108] This pattern of behavior appeared to cross party lines, raising questions about systemic issues rather than isolated ethical lapses.

The Case of Spencer Bachus

One representative in particular became notorious for his insider trading allegations: Spencer Bachus.[109] The Republican politician served in the U.S. House of Representatives from 1993 to 2015 representing Alabama's 6th District.[110] The accusations against Congressman Bachus emerged amid the rapidly gaining momentum of support for the Stop Trading on Congressional Knowledge Act (STOCK Act). To evaluate Congressman Bachus' allegations, the Office of Congressional Ethics deliberated on whether he profited from insider trades during the Great Recession in 2008. The timing

was particularly notable - the assertions were brought against him the same day Congress voted to regulate members' financial trades.[111]

The facts were quite incriminating for the representative, as he was placed in an ideal environment to commit insider trading. The most compelling evidence stemmed from his role as the ranking member of the House Financial Services Committee during his options trades. For instance, the day after receiving a nonpublic briefing on the economic crisis from Treasury Secretary Hank Paulson and Federal Reserve Chairman Ben Bernanke, Congressman Bachus placed options trades that would profit from market declines (known as "shorting" the market). Just a few days later, in the fall of 2008, when the market hit rock bottom, Bachus sold his option and doubled his investment. This type of trading would have been illegal for anyone on Wall Street who traded on nonpublic information from their job - likely resulting in criminal charges and imprisonment.[112] Despite these concerning facts, the Office of Congressional Ethics ultimately cleared Bachus of wrongdoing in 2012, highlighting the difficulty of prosecuting such cases under existing law.

An expert on Bachus' "scandal" published a book called *Throw Them All Out*. The author, Peter Schweizer, told NPR, "In terms of timing, his [Rep. Bachus] access to information is a particularly egregious example of the kind of trading we're talking about." As a rebuttal to the allegations, Representative Bachus discounted Schweizer's book on CBS 60 Minutes, "He says that, you know, in late September, that I bought some puts on the market, and that I must - Bernanke or Paulson must have told me that the market was going down. The market had come from 15,000 down to

12,000. The headline on September the 17th was markets in turmoil… When I paid my way through law school investing in the stock market, I bought a car. I invested. Do you think that I was getting inside information then? I made money before the financial crisis. I mean, in 2007, I wasn't talking to Bernanke and Paulson. How did I make all that money?[109]" While Bachus may have responded defensively with rhetorical questions, none of his actions were illegal at the time, which raised huge ethical red flags.

The Origins of the STOCK Act

To trace the beginning of this movement for congressional reform, we must first discuss how the STOCK Act rallied support. Congressman Brian Baird (D-WA) and Congresswoman Louise Slaughter (D-NY) proposed new legislation to fight insider trading on Capitol Hill. Their political move was a response to allegations brought against Senator Bill Frist in 2005.[113]

Since 1999, Senator Frist had been a preeminent leader for the GOP health care agenda. However, his fellow colleagues were curious if he had any conflict of interest with his campaigns surrounding the health care industry. Frist denied all allegations, repeatedly proclaiming his innocence. Despite these denials, an investigation into his financial dealings raised serious concerns. Amid his formal investigation, the probe found that Senator Frist owned shares in Hospital Corporation of America (HCA). This aspect was extremely problematic for him due to his father and brother having founded the company. With Frist's elected

privileges, came the ability to benefit himself and his family. In April 2004, the senator began showcasing his influence. Frist did this by leading a medical malpractice reform effort while holding familial ties to America's largest for-profit hospital company. Shortly after the Foundation for Taxpayer and Consumer Rights accused him of being unethical, Senator Frist firmly rejected any efforts to sell his shares in HCA.[114]

Frist was exposed when federal prosecutors forced his office to inform them about his sale in 2005. The issue at hand was that in mid-June of that year, Senator Frist ordered the sale of hundreds of thousands of dollars' worth of shares in his blind trust. His peculiar and notably *abrupt* sale raised many eyebrows because his family's company was trading closely to its 52-week high.[6] Two weeks after Frist's sale had been completed, HCA earnings fell below expectations and the company's stock tanked 9%. According to some estimates by CBS, HCA insiders didn't just include Frist. Many of these individuals, known as "tippees" in securities law terminology, were selling off 2.3 million shares of stock before the report was released, totaling at least $112 million. When Senator Frist was confronted directly about his involvement with HCA bailouts, he denied all allegations stating, "I've always conducted myself according to the highest ethical standards in both my personal and public life, and my family and I are pleased that this matter has been resolved.[115]" Frist invoked this statement with such confidence, almost as if he knew he would be exonerated… Because he did. Despite whatever prosecutors may have alleged, Frist was within his legal rights to sell all his holding

of his blind trust.[6] In April 2007, the Justice Department and SEC officially ended their investigation without filing charges, illustrating the difficulty of prosecuting such cases under then-current law.

Early Legislative Attempts

In an attempt to change the current congressional status quo, the STOCK Act was born on May 28th, 2006, when the two lawmakers strongly urged that members of Congress should be prohibited from acting upon insider information and called for more supervision over the growing "political intelligence" industry. Furthermore, the reform-minded duo recommended that the Department of Justice investigate the commonality of insider trading on Capitol Hill.[6] Unfortunately, the bill was highly unpopular and failed to pass in 2006. But Baird and Slaughter were persistent, and as all determined reformers are, they persisted, reintroducing the Act one year later. The Great Recession of 2008 also implicated that a slew of Congress members in addition to Bachus were potentially involved in insider trading scandals, which only helped Baird and Slaughter's case.[113]

Other Congressional Trading During the Financial Crisis

Bachus was far from alone in facing scrutiny over his trading activities during the financial crisis. A pattern of questionable trading behavior emerged across party lines, suggesting a systemic rather than a partisan issue. Additional allegations were made against prominent politicians for insider trading during the

financial crisis. For starters, Ginny Brown-Waite (R-FL) made questionable purchases of shares in Citigroup and Bank of America right after bailout funds and government stimulus bills like President Bush's financial rescue bill. Many of her colleagues raised suspicions of a potential conflict of interest in her ability to be a lawmaker.[106]

Additionally, Charlie Wilson (D-OH) was also criticized for his shady connections to Wall Street in 2008. Congressman Wilson not only made trades during the recession, but he also voted for legislation that would benefit his largest donors: Citigroup, Hartford, Bank of America, Goldman Sachs, Fannie Mae, etc. Similarly to most other Democrats in the House, he voted for the Troubled Asset Relief Program (TARP).[116] TARP was a program established by the U.S. Department of the Treasury that helped stabilize financial institutions, enabled economic growth, and prevented foreclosures during the 2008 Great Recession. [117] Wilson was indeed a beneficiary of the bank rescue program he endorsed. While his stock trades may not have been technically illegal, securities prosecutors and congressional activism groups raised concerns over potential conflicts of interest.[118]

The issue of these conflicts of interest with legislators can be noted by draftee of the STOCK Act, Brian Baird, "There should only be one thing in your mind when you are drafting legislation. Is this good for the United States of America? That's it. If you're starting to say to yourself, how's this going to affect my investments? You've got a mixed agenda and a mixed purpose for being there.[119]" Congressman Baird couldn't be more correct.

Beyond the disparities of value in some members of Congress' trades over others, there is without question a disservice to our democracy. As many people around the nation lost their jobs and homes, members of Congress were taking advantage of their ability just to make a quick buck.[106] These examples demonstrate a troubling pattern: while Americans lost homes and jobs during the financial crisis, some elected officials—across both parties—appeared to be using their privileged positions and information for personal financial gain.

The Evolution of the STOCK Act

Although the STOCK Act failed to pass two times, they refused to give up on ethical legislation. The same familiar pair, Representative Baird and Slaughter reintroduced the STOCK Act into Congress. Except this time, the stakes were much higher. The government was being lobbied to put even larger sums of taxpayer earned dollars into what was left of the financial oblivion. This was critical to certain members of Congress, since the program in question was TARP.[6] Fortunately, the U.S. House Committee of Financial Services held its first meeting on the STOCK Act. One testimony in particular established a high degree of credibility for the two. The testifier was Donna Nagy, a legal savant at the Indiana University School of Law. She also had achieved Order of the Coif status as a lawyer and was a strong supporter of their bill. To warrant her opinion, she referenced the murky trades made by members of Congress on the financial service committee during 2008. Nagy's testimony advocated for more transparency and

accountability through more definitive regulations and stringent enforcements.[120]

Then Ms. Slaughter made her case to the House stating, "I do think that there should be a law against it because of non-regulation of these intelligence lobbying firms has really grown so large. And the idea that they might take an intern or someone out to dinner—I know they are not going to take us because we passed that law, but that they might be doing that in return for information is also a pretty scary thing. So, we need to regulate them more and tell them—frankly, I don't like the whole idea of people making $40 million a year off information that is obtained from Congress for their clients." Essentially, Representative Slaughter emphasized the necessity of passing the STOCK Act to plug insider trading loopholes and address the secrecy behind the political intelligence industry. To achieve this, she revisited research reports published by Professor Alan J. Ziobrowski of Georgia State University. He claimed his decade long project found members of Congress were experiencing *abnormal* returns of 6% over the average American.[121] When asked what he meant by "abnormal returns," Ziobrowski elaborated saying their returns were too massive to, "assume that they are just plain dumb-lucky.[122]"

Academic research has consistently confirmed these abnormal returns. A 2011 study published in the Journal of Financial and Quantitative Analysis found that the stock portfolios of members of the House of Representatives outperformed the market by approximately 6% annually during the period 1985-2001, an excess return that was both statistically and economically

significant. The authors concluded that "representatives may have used privileged information to enhance their portfolio performance or are simply better stock pickers than the average investor."

Following Congresswomen Slaughter, co-sponsor of the bill, Congressman Baird voiced his perspective. Throughout his testimony, the legislator repeatedly claimed that gaining trust from the American public was of utmost significance; And, through the medium of the STOCK Act, that would finally be attainable. Moreover, he proposed to make it explicitly illegal for members of Congress and staff to buy and sell stocks for their own financial gain, as opposed to the current state of indefinite restrictions. Clearly on the same page as Ms. Slaughter, Mr. Baird also stressed the importance of increased transparency and clear ethical standards to hold *all* insider traders accountable.[121]

The STOCK Act's co-sponsors' claim of lack of public trust was backed by data. A 2009 Gallup poll found, "The percentage of Americans now believing that members of Congress have low ethics is up from 46% in 2008 and 45% in 2007 and has more than doubled since the start of the decade – rising from 21% in November 2000 to 55% today.[123]" Even though the issue of public trust was presented in the committee, *some* members had a lot to lose if the STOCK Act passed. Hence, the bill died in committee and prospects were unclear for the sponsors.[6]

Media Coverage and Growing Public Awareness

It wouldn't be until Steve Kroft covered the issue in 2011, when members of Congress were essentially forced to seriously deliberate over the STOCK Act. Kroft's segment of CBS 60 Minutes incited public outrage and brought mainstream awareness to the American people.[124] Starting off, he says members of Congress have, "other benefits: power, prestige, and the opportunity to become a Washington insider, with access to information and connections that no one else has. In an environment of privilege, where rules that govern th e rest of the country, don't always apply to them." This included unveiling the alleged financial dealings of Former Speaker of the House Nancy Pelosi and her husband Paul, for the world to see. Kroft reported that the Pelosi's had partaken in at least eight IPO deals. The deal that was highlighted most was what Kroft described as Nancy Pelosi's deal with Visa from the 2008 crisis. According to Kroft's reporting, just as harmful legislation for credit card corporations like Visa were being debated on the House floor, the Pelosi's bought 5,000 shares of Visa. This move would prove to be a vantage point, seeing as the price started at $44 and two days later, was going for nearly $64! Kroft's segment suggested that Pelosi allegedly made sure that the legislation never moved to the House floor that year. To probe Representative Pelosi, Kroft asked her point-blank about her dealings with Visa. "I wanted to ask you why you and your husband back in March of 2008, accepted and participated in a very large IPO deal from Visa at a time there was major legislation affecting their credit card companies making its

way through the House. Would you consider that to be a conflict of interest?" he asked. With a confused look, Pelosi responded, "I don't know what your point is- is there some point that you want to make? With that?" Kroft clarified saying, "Well I guess what I'm asking is, do you think it's alright for a speaker to accept a very preferential and favorable stock deal." "Well, we didn't," Pelosi interjected. Kroft continued to pursue the matter, claiming, "You participated in the IPO and at the time you were Speaker of the House. You don't think it was a conflict of interest?" Pelosi rebutted, "It only has appearance if you decide that you're going to elaborate on a false premise but it's not true and that's that.[119]"

Now that her political future was put in jeopardy, Pelosi's spokesperson issued a defensive narrative attacking the credibility of Peter Schweizer, author of *Throw Them All Out*. Drew Hammill, her spokesman, criticized him saying, "It is very troubling that 60 Minutes would base their reporting off an already-discredited conservative author who has made a career of out attacking Democrats. Leader Pelosi has been in the lead advocating for Congress to act in the public interest and not the special interest. Three years later, Schweizer's claims are an effort to revise history and are completely contradicted by Leader Pelosi's clear record.[125]" Pelosi and her office firmly denied all accusations of impropriety, maintaining that her investment decisions and legislative actions were entirely separate. Whether viewers found these denials convincing or not, the segment significantly increased public awareness about potential conflicts of interest in congressional trading. Through his reporting, Steve Kroft, had effectively highlighted corrupt power mongers like

Nancy Pelosi and Spencer Bachus who were later publicly berated.[109] While Pelosi denied wrongdoing, the damage to public perception had been done.

Now under serious public pressure, Congress revisited the STOCK Act by reintroducing it for the fourth time in 2011. Realizing the public's desire for more trust, incumbent President Barack Obama voiced his support for the bill. However, bipartisan political collaboration was going to be critical.[126] Bipartisanship efforts were initiated by Tim Walz (D-MN) in March of 2011 when he brought back the STOCK Act to Congress alongside Slaughter. Moreover, they rallied three other co-sponsors which consisted of David Loebsack (D-IA), Niki Tsongas (D-MA), and Raul Grijalva (D-AZ).[6] Meanwhile, in the Senate, Kirsten Gillibrand (D-NY) was making a case for the STOCK Act to her ninety-nine fellow colleagues. She successfully managed to get Jon Tester (D-MT) and Debbie Stabenow (D-MI) to back her in the pursuit of absolute government transparency and accountability.[127]

The Occupy Wall Street Movement: Amplifying Public Pressure

The clock was ticking, and public unrest was growing into criticism for the elitist wealthy class of Americans due to the Occupy Wall Street (OWS) movement. Protestors wanted to dismantle the economic system that only seemed to serve the rich and lock everyone else out. OWS was a period of protests with the motto, "We are the 99 percent". The first instances of the movement began when around 200 people met in New York City to

brainstorm ways to make headlines before the official launch date: September 17, 2011.[128] However, it's important to realize that protests had unofficially begun long before this date. In June 2011, there was a sit-out campaign for the city of New York to stop cutting budgets for government-provided public services. At the same time, liberal protestors gathered in New York City to form another protest in the center of Wall Street. The rendezvous location was the iconic Charging Bull statue, symbolizing their protest against powerful banks and corporations.[129]

Its founders were affiliated with Adbusters, a magazine based out of Vancouver, British Columbia. The primary objective of the organization was to discourage the mainstream culture of buying and using unnecessary consumer products.[130] The founder, Kalle Lasn, and editor of the magazine, Micah White, published a poster explaining the particulars of the protest. Essentially, the two were proposing the occupation of Wall Street to resist the rich and aid the *people*. In their iconic call to action, OWS posted the first #OCCUPYWALLSTREET tweet.[128] Not only that, but the date was also historically symbolic. This was because September 17th was the same date as when the U.S. Constitution was signed, by American revolutionaries such as George Washington, Alexander Hamilton, Benjamin Franklin, and thirty-six other delegates.[131] To disrupt pugilistic efforts to coordinate their protests at the bull statue, the NYPD closed off the statue with metal barricades. As a consequence, OWS protestors repositioned themselves by dispersing across New York's financial district. In due course, they found themselves a couple blocks away from the Charging Bull, in

Zuccotti Park. The inchoateness of the OWS movement can partially be attributed to their mindset. "It [OWS movement] was so dedicated not to having a hierarchy and not to having a strategy, that it inevitably was doomed," says Robert Reich, the former U.S. Secretary of Labor.[129]

The movement gained additional support from an unexpected ally. Anonymous was a collective hacker group who, at the time, actively promoted the call to action for the OWS movement. The collective hackers often utilized mediums of Twitter, blog posts, Internet Relay Chat (a discussion forum similar to Reddit), and their YouTube channel. The hackers released their ominous YouTube debut of the OWS movement titled, "Hello Wall Street – We Are Anonymous". In their announcement video, a computer-generated voice proclaimed, "On September 17th, Anonymous will flood into Lower Manhattan, set up tents, kitchens, peaceful barricades and occupy Wall Street for a few months. Once there, we shall incessantly repeat one simple demand in a plurality of voices. We want freedom. This is a nonviolent protest; we do not encourage violence in any way. The abuse and corruption of corporation, banks, and governments ends here! Join us! We are Anonymous. We are a legion. We do not forgive. We do not forget. Wall Street, expect us![132]" In the end, Anonymous and Adbusters suffered the embarrassment of a poor turnout, as only around 700 OWS protestors rallied in pre-agreed upon a focal point at Bowling Green Park. According to observers on that fateful day, approximately twenty to thirty activists wore recognizable Guy

Fawkes masks to showcase their support or association with Anonymous.[133]

Despite this initial setback, protesters found a strategically valuable location. The protesters resettled at Zuccotti Park, a privately owned park. Luckily for them, its privately owned status would prove to be useful for the long run. The location was identified as beneficial by members of the Tactical Committee. The committee was selected by the general assembly at their weekly meetings at Tompkins Square Park. The Tactical Committee's designated job was to identify potential sites for their protests. Journalist Mattathias Schwartz from *The New Yorker* interviewed a member of the committee, who requested the pseudonym "P.", one of his initials because he feared being terminated from his current job if his full name was publicized. P.'s writing to the journalist elaborated on the criterion for selecting a rally location. The general requirements were that it was in "A high visibility space near Wall Street and Broadway, that can hold two thousand people and is preferably a Privately Owned Public Space (P.O.P.S.)," P. wrote. The importance of the area being privately owned was so that protestors were not susceptible to New York City's curfews requiring them to be open 24-7. As told by P., the four potential locations were One Chase Manhattan Plaza, the Bowling Green "Charging Bull" statue, Battery Park, and finally, Zuccotti Park.[134] In addition to its high visibility, Zuccotti Park had long term feasibility for the protestors due to its highly accessible charging outlets. What's even more ideal was the fact that police could not disperse protestors without permission

from the owners, Brookfield Office Properties. In a matter of weeks, protestors grew into the thousands.[129]

The broader economic context fueled the movement's growth. Giving special attention to 2011, economic inequality in the United States was at record high levels. For reference, the affluent one percent held approximately 40% of all the wealth nationally, whereas the rest of America was left to share the other 60%. To increasingly inform the public about the "corporate control" over virtually anything and everything by conglomerates and the one percent, the *Occupied Wall Street Journal* got into the hands of protestors and New Yorkers as the group's official newspaper. While the protests were gaining momentum in October and November, the occupiers distributed tens of thousands of copies to deliver news about their encampments. The newspaper coupled with widespread disillusionment regarding the influence of mega-corporations instigated even more outrage from the public around the nation.[135]

Afterward, the OWS movement in New York had diffused globally. The worldwide "Day of Rage" took place on October 15th, 2011. Protestors had to resort to showing their anger on the streets in over 80 countries. A majority of the protests were peaceful, however activists in Rome turned violent and used brute force.[136] Meanwhile in New York, peaceful protestors are facing tyrannical levels of oppression and censoring. For instance, a lady is arrested just for closing her Citibank account, while journalists are fired for simply holding an OWS sign.[137] Some protestors like

Kelly Schomburg, accused NYPD Officer Anthony Bologna for brutally pepper spraying her in 2011.[138]

Collectively, the human race was demanding change from their governments. The grassroots OWS movement focused on contributing to global awareness about economic inequality and unrestricted corporate control. Their efforts hindered many powerful officials and even prospective presidential candidates. Republican Newt Gingrich advised OWS protestors to, "Go get a job right after you take a bath."[139] Nearing the end of the movement, OWS protestors found other ways to show their disapproval, which spiraled into various other movements. Examples of these coalitions were Occupy Our Homes, Occupy the Primaries, Occupy the SEC, and most notably, Occupy Congress. As these new movements were arising, the main message of OWS was spreading – income inequality must be attended to. By 2012, the movement was fizzling out. On March 17th, activists jubilantly paraded into Zuccotti Park, commemorating the six-month anniversary of the OWS movement.[137] In retrospect, Robert Reich describes the Occupy Wall Street movement as successful, "in the sense that it brought to the public's attention, the inequality of income wealth and political power in this country. But you can't have a movement unless you combine activists who are getting and receiving attention, with activists who are working to mobilize and organize people in a very specific political direction." And Reich's analysis was completely true.[129] As the sun went down for OWS' six-month jubilee, police officers officially closed off Zuccotti Park. Michael

Bloomberg, the current mayor of New York City, rhetorically asked, "You want to get arrested? We'll accommodate you." After a grueling seven-month period of protesting, the activists moved their efforts to Union Square. By this time, the movement had triggered a proclivity of tweets up in the millions, 7,000 arrests, and occurred in 113 U.S. cities alone. Occupy Wall Street had created ripples in the hearts of Americans for the next few years to come.[137]

From Public Pressure to Legislative Action

The United States suffered from an ever-growing climate of distrust for those in political power and in the financial sector. The OWS movement, coupled with media coverage of congressional trading, amplified public outrage and created a relevant backdrop to advocate for passing the STOCK Act.[124] This convergence of factors created the perfect storm for legislative action. Robert Khuzami, the director of the SEC, capitalized on this opportunity to demand rule of law be reinforced. "There is no reason why trading by Members of Congress or their staff members would be considered "exempt" from the federal securities laws, including the insider trading prohibitions, though the application of these principles to such trading, particularly in the case of members of Congress, is without direct precedent and may present some unique issues," remarked Khuzami in a statement on behalf of the SEC regarding insider trading laws applicability. The SEC's director of enforcement continued by emphasizing that with current regulation, establishing reasonable liability is difficult without implementing clear insider

trading restriction.[140] To create this liability, the STOCK Act would undoubtedly be ideal.

President Barack Obama's State of the Union Address to all of Congress, was the final presidential push Congress needed to drive the bill home. On January 24, 2012, the president declared, "the corrosive influence of money in politics. So together let's take some steps to fix that. Send me a bill that bans members of Congress from insider trading, I will sign it tomorrow!" Obama's statement was met with overwhelming enthusiasm, with almost all members in the chamber giving him a standing ovation for demanding they ban insider trading.[141]

The Legislative Process and Compromises

In response to experts' opinions and vehement political pressure, the STOCK Act quickly gained traction. Even so, passing this law, just like any other law, would be a long and arduous journey. To initiate the proposal, the bill was first deliberated on the Senate floor. Formally recognized as Senate Bill 2038, the Act specifically prohibits members of Congress, their employees, and other federal employees from leveraging insider information to take stock positions for their own personal gain.[142] What's equally important, the Senate's version required more timely financial disclosures and ethical accountability. This necessitated all specified individuals affiliated with Congress to report financial transactions in a time span of 45 days. The Senate's bill required that the details of Congress members' trades be made publicly available online as well. While there were some points of contention over the definition of "political intelligence," the Senate

passed the Act with a grand slam vote of 96-3.143 Although many political commentators considered this a victory, many promising amendments were gutted throughout hearings. For example, Senators Sherrod Brown (D-OH) and Jeff Merkley (D-OR) advocated for modifying the bill to mandate divesture of members of Congress' stock portfolios, with exceptions only being made for blind trusts. Unfortunately, their amendment failed with a 26-73 vote. Even more notably, Senator Rand Paul's (R-KY) proposed amendment which forced federal officials to divest barely failed by just three votes.144 These regulatory gaps would later foreshadow legislation by future congressional hearings…

Upon the STOCK Act's approval from the Senate, the House quickly followed to introduce their own version of the bill. Prior to the passage, House Majority Leader Eric Cantor (R-VA) made a public statement saying that the House would certainly review the Senate's bill. In addition, Cantor said he planned on bringing it to the House floor in a week.144 While reviewing the Senate's proposal for the STOCK Act, further discussions were held over the true implications of defining "material, nonpublic" information given to politicians in Congress. Defining the fiduciary duty imposed on members of Congress also gave rise to many more debates. Those who opposed the bill argued that the STOCK Act may restrict the necessary communication between Congress members and their voters.145 As is typical in the legislative process, changes were made by the House to the Senate's version. Notable amendments were the rollbacks of two of the Senate's amendments. The removal of the first amendment was the Senate's effort to change the Lobbying

Disclosure Act of 1955. If passed, the Senate's modification would mandate a new distinction of activities be added, "Political Intelligence Contacts". The second conflicting amendment was the attempt at changing the illegal gratuities statute, eventually cut out by the House. In the same fashion as the Senate, the STOCK Act received landslide approval with a vote of 417-2, only seven days after the Senate's passage on February 2.[146]

If the bill's differences were not resolved, Congress could not send the final version of the STOCK Act to the White House for ratification.[146] Moving swiftly to solve this issue, vulnerable legislators wanted to send the bill to the special committee to hold a conference to create a reconciliation of the bill's differences. Aiming for bipartisanship, the Democratic party announced that they would be willing to back a Republican-sponsored version of the bill but still wanted the bill to be closer to the Senate's version. The introducer of the STOCK Act, Representative Slaughter, warranted democrat's support saying, "We are going to be supporting it for the reason with hopes and expectations that we can go to conference." As for the House's version, Slaughter opined that it was "weakened totally" and likely going to be ineffective. Interestingly, Slaughter also defended Nancy Pelosi against the bill's "Pelosi provision," which outlawed congressional officials from engaging in early access IPO deals. "She knows how to take a punch, so she understands that this is a purely political piece of work that I thought was extraneous and totally unnecessary," said Slaughter.[147] However, the Act never went through the typical conference committee process, instead the House of Representatives chose to make amendments to the Senate's version,

contributing to Slaughter's disapproval. As mentioned previously, the removal of political intelligence provisions was amended by the House. The significance of this meant that parties who participated in political intelligence activities did not have to register or disclose their engagements. As for fiduciary duties, the legal clarification of insider information was left to be interpreted by the Office of Congressional Ethics, Judicial Conference, and Ethics Committees. The final major amendment was to ensure that legitimate interactions between members of Congress and their constituents were not blindly cut off, requesting further clarification and guidance in the Act.[148]

The Final Push: Presidential Approval

On March 22, 2012, senators gave in and passed the House's version of the bill. The only remaining portion was awaiting President Obama's signature.[149] On April 4, 2012, standing alongside Vice President Biden, the President of the United States inked the Act into public law. Obama displayed gratitude and recognition for Congresswoman Slaughter, since she was unable to attend the signing due to injuring her leg the day before. On Slaughter's behalf, the president explained his set of reasons for signing the Act. "The idea that everybody plays by the same rules, is one of our most cherished American values… It's the notion that, the powerful shouldn't get to create one set of rules for themselves, and another set of rules for everybody else. And if we expect that to apply to our biggest corporations, and to our most successful citizens, it certainly should apply to our elected officials." Then, Obama rejoiced that public trust would be salvaged because of signing the STOCK Act. The president

explicitly said, "The STOCK Act makes it clear that if members of Congress use nonpublic information to gain an unfair advantage in the market, then they are breaking the law."[150]

Key Provisions and Comparisons with Private Sector Rules

Thanks to President Obama's endorsement of the STOCK Act, over 28,000 senior government officials beyond just Congress, are required by law to publicly disclose their trades of $1,000 or more within a 30-day timeframe. This timeframe starts when the governmental official learns of the transaction and never past a 45-day period following the transaction.[6] The bill listed these officials as the President, the Vice President, executive officers or employees, members of congress, and congressional officers, among others.[142] The bill substantially improved the requirements for these disclosures to extend to individuals' spouses and dependent children. While this requirement is what made headlines, the STOCK Act also contained many other key provisions.[151]

In addition to combatting any potential conflicts of interest, the Act also called for online disclosures to alleviate the deficit of public trust. All individuals listed must reveal financial disclosure reports for the world to see in a searchable format. On top of that requirement, the fiduciary duty was established for members of Congress as well as federal employees. This meant that ambiguity between the application of insider trading laws for regular citizens and members of Congress was eliminated. The notorious "Pelosi policy" was also adopted, which inherently restricts Congress members' and

employees of the executive branch from doing business with IPO deals unavailable to the general American population.[142]

While the STOCK Act made important strides, significant disparities remain between how insider trading is regulated in the private sector versus Congress. For corporate insiders, Rule 10b5-1 of the Securities Exchange Act of 1934 requires detailed pre-planned trading schedules that must be established when the insider does not possess material nonpublic information. These plans must specify amounts, prices, and dates - providing little flexibility once established. Corporate executives typically face "blackout periods" prohibiting any trading around earnings announcements or major corporate events. Additionally, corporate insiders must file Form 4 with the SEC within two business days of any transaction - not the 30-45 days granted to members of Congress under the STOCK Act.

Furthermore, enforcement mechanisms differ substantially. The SEC aggressively prosecutes corporate insider trading cases, with penalties including disgorgement of profits, civil fines up to three times the profit gained, or loss avoided, and criminal penalties including up to 20 years of imprisonment. In contrast, STOCK Act violations are primarily handled through congressional ethics committees, which have historically been reluctant to sanction their peers. According to a 2021 study in the Journal of Political Institutions and Political Economy, these disparities create a "two-tiered system of insider trading enforcement" that continues to favor elected officials over corporate executives.

Despite these steps forward, several important definitional issues remained. Many definitions were left up to further interpretation within the STOCK Act. First, the political intelligence dilemma was no longer determined by the Congress, rather it will be reported by the current Comptroller General. The Comptroller general will utilize the Congressional Research Service to determine and evaluate the role of political intelligence on American markets. Experts accredit this to the careful examination of the relationships held between Congress members and political intelligence firms. But the even more apparent open question is, what applies as "material, nonpublic" information? These technicalities as mentioned by the STOCK Act are unnecessarily overcomplicated. This complication is due to the various scenarios of which federal employees are provided with this information, and the nature of which it was obtained. The U.S. House of Representatives Committee on Ethics defines it as "information from conference or caucus meetings regarding votes or other issues" and "information learned in private briefings from either the public or private sector". This newly modified clarification can be a hindrance to members of Congress awaiting legislation to share with the public. The Act directs the responsibility of determining the scope of "material, nonpublic" information to other committees and organizations.[148]

Future Challenges

By far, one of the most controversial but seemingly *obvious* provisions in the STOCK Act was explicitly banning insider trading. The Act specifically restricts all members of Congress, congressional staffers,

and other federal employees from acting upon material, nonpublic information to gain an unfair advantage in the securities market.[142] While the STOCK Act made some progress towards a future where insider trading within the government was less prevalent, the true effectiveness of the Act throughout the next decade was abysmal. The legal hurdles in proving liability for insider trading with lawmakers especially, would prove to be incredibly difficult in the upcoming years.[151]

Despite its ambitious goals, the STOCK Act would face several significant challenges that limited its effectiveness in the years following its passage. First, the Act's disclosure requirements were substantially weakened in 2013 when follow-up legislation removed the requirement for online searchable databases of financial disclosures, significantly reducing transparency. Second, the definition of "material nonpublic information" remained ambiguous, creating enforcement difficulties and loopholes. Third, the Act failed to establish an independent oversight body with clear enforcement authority, instead relying on the same congressional ethics committees that had previously been reluctant to discipline their colleagues.

Moreover, compliance issues would plague the Act's implementation. A 2021 analysis by the Campaign Legal Center found that dozens of members of Congress failed to properly report their financial transactions as required by the law, with minimal consequences. The absence of meaningful penalties for non-compliance essentially rendered the reporting requirements toothless. Additionally, the Act did not address the fundamental conflict of interest inherent in allowing lawmakers to trade in industries they

regulate, as it stopped short of requiring blind trusts or asset divestiture. These structural weaknesses would lead to continued calls for reform and more stringent legislation in subsequent years, as the next chapter will explore in detail.

As we will see in the following chapters, the STOCK Act represented an important first step in addressing congressional insider trading, but its limitations ultimately highlighted the need for more comprehensive reform. The persistent trading scandals that emerged even after the Act's passage would reveal that merely disclosing potentially problematic trades was insufficient to fully address the ethical concerns and conflicts of interest that arise when lawmakers maintain active investment portfolios while crafting policy that affects markets. The challenge of balancing public service with private financial interests would continue to test the boundaries of our democratic institutions and public trust.

CHAPTER

4

LOOPHOLES AND LIMITATIONS

Laws are spider webs
through which the big flies pass
and the little ones get caught.

– Honoré de Balzac, 1799-1850[152]

Despite its promise of greater transparency and accountability, the STOCK Act of 2012 has proven largely ineffective at curbing insider trading by members of Congress. The legislation's structural weaknesses, inadequate enforcement mechanisms, and numerous loopholes have cast a disastrous shadow over the integrity of American democracy... According to data gathered by *Insider* and other media outlets, as of 2023, 78 members of Congress failed to properly disclose their financial trades in a timely manner. The tardiness of their reports ranges from a couple of months to over a year.[7] These instances corroborate the Act's lack of unambiguous guidelines needed for its intended effect. What's more, no active members of Congress have been prosecuted in the decade following the bill's passing.[153]

The Collins Case: The Exception That Proves the Rule

The only exception to this blanket statement is Representative Christopher Collins (R-NY). He orchestrated one of the first disreputable scandals following the Act's passage. On August 7, 2018, Geoffrey Berman, a U.S. attorney for the Southern District of New York, announced "criminal charges against Christopher Collins, a United States congressman. Congressman Collins is charged with insider trading and lying to the FBI."[154] However, to understand how this supposed "turning point" came into fruition, we must interpret what Collins did and whether any reverberations were drawn from his conviction.

The scandal began with Collins' position on the board of Innate Immunotherapeutics Limited, an Australian-based biopharmaceutical company that had failed a critical drug trial for its primary product, MIS416. The material, nonpublic information involved Innate Immunotherapeutics Limited, a biopharmaceutical company on whose board the lawmaker held a seat. After their scheme, Collins and his son Cameron were worth an estimated $35 million because of insider information. This drug represented the company's only significant product in development and accounted for the majority of their stock's value, making its failure catastrophic for investors.[155]

Investigative reports on Collins exposed the chronological sequence of events that influenced trades by many in his inner circle. In October 2014, Innate launched their primary drug, MIS416, aiming to pass the prerequisite drug trials needed for market approval. Innate had a large stake riding on this drug, since it was their only significant product in development and accounted for the majority of their stock value. Unfortunately for Collins, he had invested thousands into the company amid its failure. Innate's CEO, Simon Wilkinson, sent an email informing him and the rest of the board that the drug had failed in clinical trial stages. Collins received this email at about 7:10 PM, on June 22, 2017, while at the White House for the Congressional Picnic.[156] Wilkinson described Collins initial reaction as, "something akin to a 'brain explosion' upon learning of the completely unexpected clinical trial result."[157] Representative Collins replied to the email saying, "Wow. Makes no sense. How are these results even possible???"[156]

What happened next demonstrated a clear violation of the STOCK Act: while standing on the White House lawn, Collins called his son Cameron, who had invested heavily in the company.[154] Following this tip from his father, Cameron Collins sold 1,391,500 shares of Innate, avoiding losses of approximately $570,900. Many followed suit and sold their investments in Innate due to the congressman's dissemination.[156]

The FBI immediately raised suspicions over Collins' astoundingly perfect trades. They alleged that while he never traded his own shares, he assisted his friends and family in avoiding $800,000 in total losses by supplying them with insider information.[155] Upon learning of his charges, Representative Collins stated the accusations were "meritless" and that he would "mount a vigorous defense in court to clear my name".[158] However, this bravado eventually collapsed, and both Collins and his son entered guilty pleas.

Collins and his son entered into a guilty plea. The convicted congressman resigned from the House of Representatives and begged for mercy in his sentence.[159] "I stand here today as a disgraced former member of Congress. My life has been shattered," he exclaimed. Collins' defense attorneys argued that he deserved leniency because of his contrition, old age, and philanthropy.[155] His constituents, however, expressed outrage rather than sympathy. The lawmaker's constituents thought otherwise. A voter named Linda Stevens from the district Collins represented wrote, "I have never written a letter like this, but I find it appalling on so many levels what Mr. Collins has done to my district… I feel duped and angry!" Another woman from his district named Anna Burakowski called for the "stiffest sentence

possible" for Congressman Collins. "There were people who had money invested in this stock and lost their money… His insider trading is a crime, period!" Burakowski wrote.[157] By admitting his guilt, Collins was only sentenced to 26 months in prison and avoided further charges for securities fraud, conspiracy to commit wire fraud, and wire fraud.[160]

While at first glance Collins' conviction might have suggested the STOCK Act had real teeth, a closer examination reveals the opposite. Political commentators believed that Representative Collins would only be the first of many insider trading busts in Congress, following the passage of the STOCK Act. But the facts presented were appalling, since at least five other Congress members owned shares in Innate as well. This list consisted of Mike Conaway (R-TX), Markwayne Mullin (R-OK), Tom Price (R-GA), Doug Lamborn (R-CO), John Culberson (R-TX), and Billy Long (R-MO). All of the congressmen affiliated with Innate claim they either sold the stock before they were tipped off or suffered huge financial losses when Innate's value plummeted.[154] While Collins later received a pardon from President Trump, largely due to his endorsement of the president in the past, many national debates were sparked.[161] On the optimistic side, political commentators proclaimed that Collins' conviction could help Democrats if they'd like to push the narrative that there are more Republican legislators involved in shady stock dealings. On the contrary, critics believed that the STOCK Act would still fail to provide sufficient defense against most members of Congress trading stocks on private information.[162]

The COVID-19 Pandemic: Exposing the Act's Fatal Flaws

Unfortunately, critics' skeptical assumptions would later be proven accurate. Christopher Collins conviction in 2019 remained an idiosyncratic case. What would truly expose the STOCK Act's inadequacies was an unprecedented global crisis that no one saw coming - except, apparently, certain members of Congress with access to classified briefings. In late 2019, the COVID-19 virus infected patients in Wuhan, China. Slowly but surely, the international community reacted by taking necessary health precautions.[163] By March of 2020, the White House had declared a national emergency in regard to the global pandemic.[164] In turn, a global pandemic also meant a global recession. The U.S. especially suffered a devastating 9% drop in gross domestic product (GDP), surpassing the 4% drop in the Great Recession of 2008.[165] With this in mind, the stock market also suffered tremendously. And who by chance, was the first to discover the economic threat COVID-19 posed to the United States? Congress members![166]

The extent of congressional trading during this crisis came to light largely thanks to financial transparency advocates. A Twitter (now known as X) user would single-handedly discredit the STOCK Act in front of the American public.[167] The account's name was Unusual Whales, a platform that provides options trading information about elite individuals to inform retail investors.[168] Their analysis revealed shocking statistics: Accounting solely for senators in 2020, Unusual Whale's sector report found that senators profited with an outlandish average return rate of 30.9%. The STOCK Act had failed

to deter these members as well, since they made 693 stock purchases that year with returns totaling roughly $65 million in value.[167]

Although some members of Congress were making these dubious trades, four legislators made trades in a particularly egregious manner. Four senators in particular became the focus of public outrage and SEC investigations for their suspiciously well-timed trades preceding the market crash. These Congress members faced scrutiny over their manipulative scheme to leverage their positions on confidential committees and connections to advance their own financial pursuits. The quartet included Richard Burr (R-NC), Kelly Loeffler (R-GA), Dianne Feinstein (D-CA), and Jim Inhofe (R-OK).[169]

Senator Richard Burr: A Case Study in Evasion

Conservative Senator Richard Burr and his brother-in-law, Gerald Fauth fell into some hot water with the SEC for their stock sales in February 2020. The investigation was triggered when investigators discovered a suspicious phone call between Burr and Fauth on the very same day both made significant stock sales - just before the market collapsed. The probe was launched due to red flags raised from Burr's phone call with Fauth, unsurprisingly the exact same day as their stock dumping. In fact, investigators were so suspicious that FBI agents confiscated Burr's personal phone in May of 2020. A direct consequence of his device's seizure was his temporary resignation from the Senate Select Committee on Intelligence.[170]

Documents obtained by investigators revealed that Senator Burr had sold assets valued between $600,000 and $1.7 million - with a particular focus on hotel and hospitality companies that would be decimated by the coming pandemic. Burr's stock sales consisted mostly of hotel companies, a service-based industry that would not perform well during a pandemic.[169] And of course, Senator Burr's genius stockbroking intuition saved him once again! As a result of the pandemic, the hospitality industry completely died, losing $534 million on a *daily* basis.[171]

The evidence against Burr appeared substantial. What's even more incriminating, between the months of January and April 2020, Burr was regularly sending texts to his potential source for insider information. A government affidavit wrote they, "exchanged approximately 32 text messages, nearly all of which concerned, in one way or another, the COVID-19 pandemic." As for Fauth, he made investments upon receiving an informative call from the senator. Therefore, a multitude of investigators assessed Burr's spike in trading activity was potentially in violation of the STOCK Act's provisions.

Yet despite this damning evidence, the outcome demonstrated just how toothless the STOCK Act truly was. The STOCK Act's superficial applicability proved insufficient for investigators to build a case against Senator Burr. [172] Despite his deceitfully reassuring Americans while simultaneously jumping ship behind closed doors, the SEC inevitably terminated their insider trading probe into Senator Burr and his brother-in-law's stock dealings. The two men walked free of any charges.[170]

Senator Kelly Loeffler: Family Connections & Convenient Denials

Burr wasn't the only senator who would be an actor in propelling the STOCK Act's ignominy. Another was Kelly Loeffler, a wealthy political figure in Georgia. Loeffler's case was particularly troubling because of her husband's position as chairman of Intercontinental Exchange, the company that owned the New York Stock Exchange. Like Burr, Loeffler's investigation concerned her familial affairs. Her husband, Jeff Sprecher, served as the chairman of Intercontinental Exchange, which owned the NYSE.

Allegedly, Loeffler informed her husband about the imminent economic vulnerability posed by the coronavirus pandemic after attending confidential briefings held for the Senate.[173] However, ethical governance advocacy groups launched complaints against Loeffler and her husband for their unprincipled sales following her COVID-19 briefing in late January. Their grievances were calling upon the lawmaker to address the claims that she and her husband sold upwards of $3 million worth of investments.

Loeffler immediately went on air to mount a defense of excuses as to why her husband's post-coronavirus trades were justifiable. For starters, she explicitly said, "I am very confident that we have followed the letter and spirit of the law." Senator Loeffler went on to say that the thirty trades made by the couple were facilitated by their third-party investment advisors without any input

from her. In addition, she mentioned how her husband's trades were "quite bullish" and a clear mix of buys and sells.[174]

As soon as the DOJ announced it was terminating all investigations surrounding Loeffler and Sprecher, Loeffler's spokesperson maintained her innocence. "Today's clear exoneration by the Department of Justice affirms what Sen. Loeffler has said all along: She did nothing wrong," Stephen Lawson, her spokesperson emphasized in a Politico interview. "This was a politically motivated attack shamelessly promoted by the fake news media and her political opponent."[175]

But the integrity of Loeffler's trading activity would later be viewed dubiously. She would later incriminate herself when she and her husband purchased shares in Citrix, a teleworking software company, and Oracle, a cloud application company with numerous software applications. Intriguingly, these stocks belonged to companies that serve millions of Americans working at home due to the national lockdown…[174]

Senators Feinstein and Inhofe: Case of Convenient Timing

Like her colleagues, Senator Dianne Feinstein's case highlighted another common defense against STOCK Act violations: attributing trades to spouses or family members. Senator Dianne Feinstein and her husband were put under intense scrutiny to determine if the couple violated the STOCK Act. Per disclosed reports, the investment banker Richard Blum dumped his shares in a biotech company right before the COVID-19 recession hit.[176] Feinstein's

husband panicked and sold holdings in Allogene Therapeutics, the company that sunk as a result of the pandemic. On February 18, Blum sold somewhere in the ballpark of $1 million to $5 million worth of Allogene investments, repeating what his senator spouse took the liberty of doing before.

You'd be wrong to think Senator Feinstein made zero trades at all. Weeks before Blum made his sales, Feinstein sold shares in Allogene valued between $500,000 to $1 million. When faced with vehement public criticism, Senator Feinstein's representative spoke on her behalf saying, "All of Senator Feinstein's assets are in a blind trust, as they have been since she came to the Senate… She is not involved in any of her husband's financial decisions." The bottom line is, Feinstein refuted all claims saying she never traded a single stock since her husband made trades for her, without material, nonpublic information. Despite the suspicious timing and contradictory statements about blind trusts, the outcome followed the now-familiar pattern. Ultimately, Feinstein ended up with circumstances we know all too well…[177] She and her husband were exonerated, free of any investigation or criminal charges.[175]

The last major senator involved in the COVID-19 congressional trading scandal was Jim Inhofe.[169] At the time of the STOCK Act's passage, Senator Inhofe was the 18th richest senator. And like many other members of Congress, he had no plans on retiring anytime soon.[178] He experienced yet another successful re-election and served as Oklahoma's senator during the time of the coronavirus epidemic.

Inhofe's trading activity was particularly suspicious in its timing. The senator actively served his personal portfolio by trading many stocks and made a killing doing it too. Inhofe was publicly berated for his stock dumps on January 27th, right before the economic recession hit in February 2020. Specifically, the senator sold his shares in Apple, Brookfield Asset Management, and PayPal for nearly $400,000.

Just like his three fellow colleagues, Senator Inhofe denied all wrongdoing and claimed that any and all stock transactions he makes, including this one, were made without his knowledge. A clear murky response to his insider trading allegations.[177] The DOJ initiated a probe into Inhofe's market dealings before the pandemic, with many calling for criminal charges. But you guessed it, no charges were brought upon the Congress member, just like the other three lawmakers.[179]

Public Outrage and Media Response

It was now clear. The STOCK Act failed to clearly outlaw any of the Congress members' actions above. Along with this, the bandage placed on the lack of public trust had certainly been torn off. In one of America's most dire times, people didn't even know if elected officials were on their side.

Adding even more salt to the wound were other lawmakers and political commentators. One of the first public figures to arrive on the scene, was Representative Alexandria Ocasio-Cortez (D-NY) more colloquially known as AOC.[177] AOC, an assiduous waitress

turned congresswoman, emerged as a youthful underdog for the Democratic Party, rising to national fame for her impatient climate demands and condemnation of corporate greed.[180] Triggering even more public rage, AOC tweeted, "It is stomach-churning that the first thoughts these Senators had to a dire & classified #COVID briefing was how to profit off this crisis… They didn't mobilize to help families, or prep response. They dumped stock." AOC specifically condemned Loeffler and Burr in her tweet and demanded their resignation, but her bludgeoning can be interpreted on a wider scope towards Feinstein and Inhofe as well.[174]

AOC's berating only scratched the surface. Another Democrat, Andrew Yang best known as a former presidential candidate also spoke out. "If you find out about a nation-threatening pandemic and your first move is to adjust your stock portfolio you should probably not be in a job that serves the public interest," tweeted Yang. It must be remembered that the backlash was not only from Democrats and constituted a bipartisan response from Republicans as well. Far-right political commentator Charlie Kirk and outspoken supporter of Donald Trump lambasted the actions of the four senators. Along with AOC and Yang, Kirk took to Twitter to say, "I don't care if you're Republican or Democrat. If you trade with inside info to enrich yourself during a crisis you are a disgrace. Resign, apologize, and donate all earnings to families of victims of China Virus [COVID-19]."[177] The belligerent way the political media personas and outlets responded strengthened Americans' nascent perspectives. Politicians were not trusted.

Structural Weaknesses in the STOCK Act

The main weakness of the STOCK Act's applicability was its lack of clear and airtight regulations. For example, no dichotomy of legality has been formed between members of Congress and what constitutes as lawful relationships with their financial advisors. How often can they call them? Should they be permitted to hold "urgent" meetings to consult with their trustees? These questions remain unanswered.[148]

Absence of Blind Trust Requirements

Perhaps the most significant omission in the STOCK Act was its failure to mandate qualified blind trusts (QBT) for all members of Congress. The people of the United States should not leave it up to the voluntary morality of lawmakers. Instead, if a Congress member wishes to have investments, they must place all their assets in a QBT or refrain from trading entirely. The concept of a QBT is in the best interest of the constituents and leads to faithfully executed political decision-making.[181]

A proper QBT includes five essential components that ensure true separation between lawmakers and their investments:

1. First and foremost, the QBT arrangement is positioned by appointing an *independent* trustee who could be anywhere from an attorney, certified public accountant, banking institution, stockbroker, or investment advisor.
2. The second requirement for a QBT is to ensure the degree of control is not exercised by the holder, but the trustee.

3. This flows into the third aspect of QBT, placing stringent restrictions on communication between the interested beneficiary and the trustee. The only instance where transmission can be allowed is for general financial interests or legal issues. Under absolutely *no* circumstances, is divulgence by the holder who in this case, is the Congress member permitted.
4. Moreover, the fourth part of an effective QBT is gaining approval from the ethics office in charge of supervising the trustee and the owner.
5. The final and most critical feature of QBT is making certain that the trust's holdings are sealed, with owners only receiving negligible reports for tax purposes.[182]

While blind trusts offer clear benefits, their implementation must be carefully designed. The primary benefit of a QBT mandate is reassurance of the public's confidence in ethical lawmakers. However, when implementing a policy of this magnitude, regulators must be heedful of the potential for it to backfire. If rashly imposed, a QBT would enable members of Congress to secretly trade their holdings anyways, while the general public remains naïve to their inferences.[181]

The Case of Representative Mike Kelly

Even though members of Congress were vulnerable to public lambasting, some Congress members were simply undeterred by this. Around 2020, many politicians began deliberately moving their stock portfolios into blind trusts, to appease the public's scrutiny.[181] One

politician who defied this was Representative Mike Kelly (R-PA), a relatively unknown congressman.

In 2020, a congressional ethics organization stated they had "substantial reason to believe" that Congressman Kelly colluded with his wife to make trades in violation of the STOCK Act. If these allegations were true, Mr. and Ms. Kelly were likely looking at similar legal penalties faced by disgraced Congress member Christopher Collins.

What made Kelly's case particularly egregious was his apparent obstruction of the investigation process. When the Office of Congressional Ethics (OCE) raised questions over their dealings in April 2020, Kelly, his wife, and his senior staffer all rejected their request for interviews in order to move forward with the investigation. As a consequence of this, the OCE recommended subpoenas for them and published Kelly's dealings for the world to see.

The timeline of events strongly suggested coordination between Kelly's official actions and his wife's investments. The report unveiled Representative Kelly's advocacy for a steelmaking company based out of Ohio called Cleveland-Cliffs.[183] For reference, in 2018 the government's commerce department placed tariffs on imports for specific steel parts, helping Cleveland-Cliffs to profit from their lack of competitors. The tables were eventually turned though, since the foreign steel manufacturers had found a way to sidestep the Department of Commerce's tariffs. To prevent the American

company from going under, Representative Kelly advocated for an investigation into the affair.

The sequence of events appeared to show clear coordination between Kelly's official actions and his family's investments. According to OCE investigators, on April 28, 2020, Congressman Kelly's secretary apparently shared news that the investigation would begin. In turn, Cleveland-Cliffs would regain its benefit and remain open. With this in mind, Kelly brazenly ordered his wife to buy the company's stock, *literally* the next day. On April 29, 2020, Victoria Kelly conspicuously bought $15,001 to $50,000 shares of Cleveland-Cliffs.

The financial returns on this suspiciously timed investment were extraordinary. This "perfectly coordinated" trade made an outrageous amount of money for the Kellys. Starting off at just $4.70, the value of the stock skyrocketed to $18.11 a share. In simple terms, when Kelly's wife sold the shares in 2021, the value jumped by nearly 400%! But once again, the STOCK Act's regulations had fallen short.[184] There wasn't enough proof or reasonable suspicion to investigate the two; hence, neither Representative Mike Kelly nor Victoria Kelly was criminally prosecuted.[183]

The Case of Representative Tom Malinowski

With America and the rest of the world enduring the hectic year that was 2020, certain lawmakers on Capitol Hill were still eager to make cash grabs. For Congressman Tom Malinowski (D-NJ), the nation's havoc was the perfect time to invest in the companies set on

providing pandemic relief.[185] In doing so, Malinowski flat out failed to comply with the STOCK Act's disclosure requirements. Sources show that Representative Malinowski was tardy to disclose hundreds of securities trades from his trust valued from $1.6 million all the way to $3.9 million in investments. This pattern of late disclosures lasted from January 2019 to March 2021, until a *Business Insider* article that was published exposed his violations of the STOCK Act.

As discussed in Chapter 3, the Act clearly stipulates that the transactions must be reported no later than 30 days after the owner is made aware within 45 days of their transaction.[186] Malinowski's most controversial undisclosed trade was when he made a deal involving the shares of a medical-diagnostic company. But this wasn't just any company. It was a primary manufacturer of COVID-19 testing kits, a company that would net exponentially higher revenues than it was earning before coronavirus hit.

The scale of Malinowski's unreported trading was substantial. Per the lawmaker's office, his spreadsheets revealed he traded at the minimum $671,000 and on the high end $2.67 million as the pandemic erupted. Republicans seized this opportunity to ridicule Democratic legislators dubbing Malinowski "Trader Tom" and mocked him by tweeting #tradingtom.[185]

Making a public apology, Congressman Malinowski said his tardiness was due to "carelessness on my part, which I regret and take full responsibility for. This is not a justification or excuse." The lawmaker added, "I have an overwhelmingly busy job… there is nothing in my financial world that I was trying to hide, but I did not

put enough pressure on myself to do it" according to the STOCK Act's deadlines. Perhaps the representative was trying to keep his tenure, but luckily for him, no actions have been taken against him so far.

Ironically, the lawmaker's platform for his 2020 campaign said he "championed comprehensive reforms to limit the role of money in politics and increase transparency to ensure regular people – not corporations or special interests – have the strongest voices in Washington."[187]

The Scale of the Problem and Public Trust

What's even more concerning than Malinowski's violations, are the plethora of other Congress members violating the STOCK Act's provisions and partaking in conflicts of interest. To be exact, as of 2023, *Insider* identified a jaw dropping 78 total members of Congress who have simply failed to report their financial stock trades in a timely manner.[7]

Another corroboration of the fiasco that we know as the STOCK Act is the statistics from public surveys. According to a poll conducted by the Campaign Legal Center, public trust has been eroding since its passing. The results collected in November of 2021 showed, "67% of voters support prohibiting members of Congress from owning stock in specific companies. That same poll also found that 78% of Americans had 'extremely serious concerns' with members of Congress profiting from information they learned during a classified briefing through stock trading.[188]" The American public

had spoken. They were not satisfied with the work of their appointed national regulators in regulating themselves, and rightfully so.

Minimal Penalties: The $200 Fine Problem

The elephant in the room that has not been addressed yet is why members of Congress seem to be so unfazed despite violating a federal law. The answer is very simple. No devastating retribution is being administered for their actions. Rather, a measly $200 fine is charged for reporting late. A $200 fine! For a group of some of the wealthiest folks in America! That notion in and of itself is stingy and pathetic, since the law permits lawmakers to govern themselves with high levels of forgiveness.

The penalty structure is so weak that it incentivizes violations. Additionally, no public record is even accessible to see whether the fines are being paid in full.[151] If America wishes to put an end to the conflict-of-interests occurring by Congress members, the public must recognize how the $200 penalty only exacerbated the issue. By giving the illusion that the problem had been solved, members of Congress continued to make a flurry of investment transactions, when the reality was that legislators were entirely undeterred.

A remedy to cure their lack of fear is implementing higher and more significant penalties. Cracking down can be through the means of proportional fees to the money made off their trades or just absurdly large fees, a price not worth paying. Nothing scares away would-be criminals more than a meaningful penalty.[181]

Representative Mark Green: The Energy Independence

So long as this reform was being stalled by members of Congress, legislators were still able to make millions in trades. Take Representative Mark Green (R-TN), who faced scrutiny in 2022 over his trading activities. The congressman was insistent on promoting an energy independent America. "Say it with me: American. Energy. Independence. NOW!" tweeted Green on March 1. This was only one among the flurry of tweets that he would preach about energy independence to his supporters.

Green's public advocacy aligned suspiciously well with his private investments. Further into that month, he introduced a piece of legislation that would disallow the U.S. from purchasing foreign oil from major oil distributors such as Russia, Iran, and Venezuela. If you thought Representative Green didn't have an ulterior motive, you'd be wrong. The lawmaker's financial reports disclosed in August would go on to expose his stake in the bill's success. Congressman Green had bought an estimated $100,000 to $250,000 worth of shares in NGL Energy Partners, an energy provider to producers and end users. Later that year, Green sold shares in a different company, Energy Transfer LP. According to his Financial Disclosure Reports (FDRs), his trades were worth at the very most – $215,000. Although his trades were not extremely late, some were 15 days late and others were not tardy.[189]

The Russia-Ukraine War: Defense Stocks and Congressional Profiteering

International conflicts created additional opportunities for congressional trading abuses. Nevertheless, the House and Senate floors were in dispute over whether they should even be permitted to trade stocks period at all.[189] Amidst congressional policy debates, a crisis in Europe ensued. It was a foreign conflict that would reveal the true ethics of the folks wielding power on Capitol Hill. On February 24, 2022, the international community watched as Russia invaded Ukraine, ordered by their feared president, Vladimir Putin.[190]

As with COVID-19, many members of Congress appeared to use their privileged information about international events for financial gain. The infamous ex-KGB spy was a staunch irredentist, advocating for Ukraine to be restored as a part of Russia, similarly to Crimea's annexation in prior years.[191] [192] With Russia successfully thwarting NATO's prospective alliance with Ukraine, Ukraine was left vulnerable to a flank from Russia (without invoking Article 5). By October of 2022, Putin had managed to seize control over four Ukrainian regions.[190] As most of the world mourned the lives lost in the Russo-Ukrainian war, a multitude of unprincipled Congress members leveraged this situation for their own financial advantage.[193]

Because of this, legislators had an enormous financial incentive to argue in favor of aiding Ukraine's military arsenal.[194] But this trend isn't recent. Two years prior, fifteen members of Congress sitting on defense committees also happened to personally own defense stocks.

Among the Congress members who profited from the tragic invasion of Ukraine were a boatload more. To be exact, at least twenty members of Congress (that we know of) held investments in

weapons contractors who were extremely likely to profit from any military aid packages sent to a distressed Ukraine.[193] Of this powerful group was Representative Marjorie Taylor Greene of Georgia also referred to as MTG. The tumultuous conservative purchased anywhere from $1,001 to $15,000 in Lockheed Martin stock in late February. MTG's trade would prove to be very astute, as it was two days before Putin publicly declared military action upon the independent country. Her investments were even more favorable because Lockheed Martin was a key manufacturer of the Javelin anti-aircraft missiles given to the Ukrainian military as weaponry shipments.[195]

Some members demonstrated remarkable hypocrisy in their public statements versus private actions. Then, in pure sanctimony, MTG tweeted: "War is a big business to our leaders."[193] This not only infuriated opposing voters but also her fellow representatives. Representative Ilhan Omar (D-MN) blasted MTG for her plain hypocrisy as did many others.[196]

The pattern of defense contractor investments was widespread. Likewise, over a dozen other Congress members or their direct family members traded in aerospace and defense contractors like Raytheon and Lockheed Martin as well as Northrop Grumman among others.[194] This was also around the time when President Joe Biden signed off on a $350 million aid package to the Ukrainian forces.[193] Even setting the war aside, lawmakers were still raking in mammoth sized capital gains. In merely the 2023 fiscal year, the House had bought or sold $273 million with the Senate trading around $40 million worth of stocks. Some members of Congress like Mark Green

are beating the market by 122.2%, with other representatives like Brian Higgins beating the S&P500 (SPY) by a whopping 238.9%.[196] Something had to be done… The STOCK Act was nothing but a botched attempt at reform.[113]

Obstacles to Enforcement: Speech or Debate Clause

After a decade of its passing, the STOCK Act was intended to mandate senators and representatives to collectively prioritize their voters' interests over their own.[113] Rather, members of Congress have always enjoyed the benefit of the doubt. This can be attributed to a unique constitutional right, one only granted to lawmakers – the Speech or Debate Clause. This sole privilege would doom the STOCK Act from the start.

The Speech or Debate Clause creates a significant legal barrier to prosecuting members of Congress. This item in the Constitution is a roadblock to prosecuting members of Congress for alleged insider trading scandals because it restricts the executive and judicial branches from investigating the laws they pass and from providing legal scrutiny from of their legislative activities.[195] In the case of Senator Burr, FBI investigators failed to successfully prosecute him because they had to take precautions to not be in violation of their constitutional rights.[172]

This constitutional protection creates an almost insurmountable barrier to enforcement. The Speech or Debate Clause is essentially a broad level of immunity from liability for anything they do, unless it is evidently illegal.[8] For that reason, legislators cannot be

interrogated over anything they learned during their incumbency as a Congress member. Coupled with the nebulousness of insider trading laws, this makes it almost impossible to convict a lawmaker of shady stock dealings owing to the low number of convicts but a multitude of indictments.[195]

Exacerbating the corrupt nature of Capitol Hill even further, was its easygoing level of self-policing by congressional ethics committees. The poor enforcement of the STOCK Act simply doesn't hold Congress members accountable. Implementing weak enforcement mechanisms was another fatal flaw of the bill and why no noticeable results can be observed nearly a decade later.[197]

Unintended Consequences: The TikTok Effect

What's more are the underlying effects of the STOCK Act which were unintended by congressional watchdog groups. A significant amount of harm should be associated with perceived conflicts of interest by the public. This perception of congressional insider knowledge has led to retail investors mirroring the trades of affluent lawmakers.[198]

Social media has amplified this effect, creating new market distortions. When news resurfaced into the public eye that Congress members were making almost "psychic" trades, creators on TikTok started unveiling what trades they were making to ordinary citizens.[198] The TikTokers' videos inadvertently sullied the fundamental principle of the STOCK Act: Deterring stock trading. Instead of achieving its purpose of avoiding congressional stock trading, it incentivized

legislators to trade even more since their trades led to positive returns due to the newfound influx of mimicking retail investors.[198]

These patterns highlight the Act's fundamental design flaw. The STOCK Act's failure stemmed largely from its inability to permanently and indefinitely ban Congress members from owning stock altogether. If this ban had been implemented in the Act, there would be no gray area or room for conflict of interests in the first place in the chambers of Congress.[198]

Reform Proposals: Rebuilding Public Trust

Despite increasing transparency, the STOCK Act has failed to restore public confidence. Even with the STOCK Act's increased efficacy in creating transparency of the trades made by lawmakers, the conspicuity did not increase the public's trust in their elected officials at all.[199] This stems from over 200 members of Congress and their senior staffers combined having violated the disclosure requirements from just 2020 to 2021, along with many other cases too numerous to even count.[198]

So, what should be done to mend the public's trust? Well, there are two potential solutions for a trust recovery bill. First and foremost, a legal mechanism is a prior ownership mandate. Basically, it would require members of Congress to halt trading stocks while in office and still be able to hold personal investments from beforehand. In addition, this would be more likely to garner support from stalling lawmakers because they wouldn't be forced to renounce their investment portfolios.

The Ban Conflicted Trading Act represents one promising approach. This bill was introduced to the 117th Congress. This Act sought to achieve exactly this – lawmakers are not authorized to "purchase or sell any covered investment" but "may have control over or knowledge of the management of any covered investment held by the covered person as of the day before the date on which the covered person took office." The legislation also cracked down on the minor $200 penalty by imposing civil fees "of not less than 10 percent of the value of the covered investment that was purchased or sold" for violating the Act's stipulations. Additionally, the bill expands coverage beyond just members of Congress to include "any senior staff," closing another significant loophole in the current law. However, this particular bill reforming the STOCK Act will be discussed more extensively throughout Chapter 8. This is merely one of the methods for reconstructing the public's trust in their elected officials.

The second legal mechanism involves requiring pre-approval before any Congress members trade options. Through the means of unbiased third-party reviewers, these committees can deliberate over the ethical nature of their trades. If there are checks and balances which restrict lawmakers from abusing their powers, then the public's trust will be derived from this uniform procedure. The only thing is, appointers must remain hyper vigilant to ensure that no subjective political biases penetrate into investigations, and the conflict-of-interest investigations are purely run on the basis of factuality. Finally, in order for this system to be effective, the parameters of what counts as an appropriate trade and what doesn't should be carefully framed.

If executed properly, there can only be positive results for the legislators and the constituencies that they represent.[181]

Beyond Reform to Fundamental Change

Yet, many pressing questions still remain unanswered: Should members of Congress engage in trading on inside information for their own good? Is circumventing the loss of thousands of dollars worthwhile even if it means forfeiting a political future? Ultimately, it's through the lens of game theory that the complexities of their choices can be revealed, where each of their decisions intertwines with strategy, risk, and the delicate dance with political ambition.

Major STOCK Act Violations (2018-2023)

Lawmaker	Party	Approximate Value	Nature of Violation	Outcome
Rep. Chris Collins	Republican	$800,000 (family savings)	Tipped off family about failed drug trial	Convicted; sentenced to 26 months; later pardoned
Sen. Richard Burr	Republican	$600,000-$1.7 million	Sold hotel stocks before pandemic crash	Investigation terminated; no charges
Sen. Kelly Loeffler	Republican	$3+ million	Sold stocks after COVID briefing	Investigation terminated; no charges
Sen. Dianne Feinstein	Democrat	$500,000-$1 million (personal) and $1-5 million (husband)	Sold biotech shares before pandemic	Investigation terminated; no charges
Sen. Jim Inhofe	Republican	$400,000	Sold tech stocks before pandemic	Investigation terminated; no charges
Rep. Mike Kelly	Republican	$15,001-$50,000	Wife bought steel company stock after husband's intervention	No prosecution despite OCE recommendation
Rep. Tom Malinowski	Democrat	$671,000-$2.67 million	Failed to disclose hundreds of trades	No penalties; public apology
Rep. Mark Green	Republican	$100,000-$250,000	Bought energy stocks while pushing energy independence policy	No consequences for 15-day late disclosures
Rep. Marjorie Taylor Greene	Republican	$1,001-$15,000	Bought defense stocks before Ukraine invasion	No consequences despite public criticism

CHAPTER 5

STRATEGY IS KING

Game theory allows us to understand
how political actors,
whose behavior is driven by self-interest,
may nonetheless cooperate to achieve
mutually beneficial outcomes.

– Francis Fukuyama, "The Origins of Political Order[200]"

When it comes to congressional stock trading reform, understanding lawmakers' incentives is essential. This chapter explores how game theory reveals why ethical conduct is actually in legislators' best long-term interests. Somehow, politicians are masters at artfully winning our approval. Behind their carefully crafted public personas, many are kindred yet crooked, democratic yet deceitful. Politics is a dog-eat-dog game where strategy is the only means for survival. While this book's main intent is empowering the citizens of the United States to call upon self-serving lawmakers to pass financially self-regulatory laws, this chapter specifically demonstrates why it's in lawmakers' own *best interests* to embrace reform before facing intense public backlash.

Everyone acts in their own interests, whether they realize it or not, which is why one of the best ways to incentivize those who hold all the cards is by appealing to their own interests.[201] Although members of Congress undoubtedly have access to a legal profit-making opportunity through their constitutional protection and access to insider information, they should refrain from acting selfishly.[195] After all, acting out of avarice has always proven catastrophic – and in this case is actually a pyrrhic financial victory for legislators.

Game Theory: The Mathematical Foundation

Despite elected representatives and senators holding the keys to unstoppable trades, this is a mathematically bad decision for them to make. Game theory - the study of strategic decision-making - reveals why lawmakers should cooperate rather than exploit their privileged position.[202] While it may sound academic, game theory is one of the

most universally applicable fields in all of mathematics. Described as the "study of interaction" by mathematicians at the London School of Economics, game theory is present in all realms of our lives.[203]

The Prisoner's Dilemma: Understanding Congressional Ethics

The most famous problem studied by game theorists is known as the Prisoner's Dilemma. This theoretical scenario can be found in international conflicts, poker tables, biological relationships, and even college students deciding which roommate takes out the trash. Identifying the most optimal strategy can be the difference between prosperity and ruin, conflict and peace, and most importantly, success and failure.[204] For members of Congress considering whether to trade on inside information, the Prisoner's Dilemma perfectly illustrates why acting in short-term self-interest leads to worse outcomes for everyone involved - including themselves.

The Prisoner's Dilemma demonstrates to Congress members that acting in their own interests will lead to a sub-optimal outcome for them and the American public. This "dilemma" models a situation where two prisoners charged with the same crime have opposing motives and are forced by authorities to decide their next course of action. They have four options:

1. Mutual Cooperation: If neither of them confesses to their crime, Prisoners A and B will both get 2 years in prison. However, a district attorney suspects that both prisoners were involved in a much more serious crime. The only problem is that investigators

have found no evidence. The DA offers both convicts a deal, creating an opportunity for three other scenarios.

2. One-Sided Betrayal (A betrays B): This gives rise to the second possibility of Prisoner A confessing, at the expense of Prisoner B. Of course, it is contingent on if Prisoner B refuses to admit his crimes though. If this is the case, Prisoner A will enjoy a reduced sentence of 1 year while Prisoner B's will go up to a decade.
3. One-Sided Betrayal (B betrays A): Vice versa, the third option is Prisoner B's optimal scenario of 1 year whereas Prisoner A's least optimal scenario of serving 10 years if he doesn't confess.
4. Mutual Betrayal: Finally, the fourth option is if Prisoner A as well as Prisoner B confesses that they were co-conspirators, resulting in an increased sentence to 3 years for both of them.[205]

Some would argue that defecting (ratting the other one out) is the most rational choice for both prisoners; however, this is not necessarily the case. If both prisoners betray each other, they may think they are getting a sweet deal, when in reality they are prolonging their sentence.[205]

The Nuclear Arms Race: A Historical Example of the Prisoner's Dilemma

So how did such a compelling paradox come to light? And how does it apply to congressional ethics? Answering the first question means revisiting one of mankind's most recurring events… From the era of Jesus to the rule of Genghis Khan, this happening has withstood the test of time – warfare.

On September 3, 1949, a U.S. military weather monitoring plane was making its routine route over Japan, when suddenly, it picked up something incredibly disturbing. Director of Central Intelligence Admiral Roscoe Hillenkoetter gave President Harry Truman a letter stating that the aircraft had identified traces of "abnormal radio-active contamination".[206] Upon discovery, the U.S. Navy expeditiously gathered and investigated rainwater samples around their ships and bases worldwide. Just like before, naval researchers found tiny traces of radioactive substances, of which were Cerium-141 and Yttrium-91. These chemicals intrigued the investigators because they weren't any ordinary elements – they were isotopes. This singular detail was crucial for the U.S., since the two isotopes only had half-lives of 1-2 months… Meaning the chemicals were recently created. The only possible explanation was that the particles originated from a nuclear explosion.[205] Except they were left puzzled. The U.S.' military had not conducted any nuclear tests that year, and at the time, had a monopoly on nuclear arms production. U.S. intelligence officers finally started to grasp what was happening – the Soviet Union had discovered how to engineer nuclear bombs.[207] Americans took this fearfully, since now their military supremacy established by J. Robert Oppenheimer's Manhattan Project had vanished.[205] It turned out, German theoretical physicist Klaus Fuchs worked as a spy on the project to supply technical information to the Soviet Union. This was huge for the Soviets, as it aided them in quickly creating an identical replica of America's atomic bomb design.[207] Many political figures and high-ranking military officials believed that it would be most favorable for the United States to

launch an unprovoked first strike on the Soviet Union, believing in its promise to quickly terminate any chance for the Soviets to attack. Americans were anxiously waiting for closure.[205]

A year after the discovery, two scientists from the RAND Corporation, a respected think tank, addressed this issue with game theory. Merrill Flood and Melvin Dresher conceptualized the Prisoner's Dilemma, with mathematician Albert W. Tucker formalizing and interpreting it later on.[208] Unknown to the researchers, the theoretical problem closely resembled the U.S.-Soviet nuclear arms race. In this particular international conflict, both nations went on to develop tens of thousands of nuclear missiles. This left both countries locked in a predicament: Mutually assured destruction (MAD).[205] MAD is the notion that deterrence will occur, since one superpower's attack would be suicidal due to the other nation striking right back militarily. After all, the best defense is a good offense. This quote from political science professor Kenneth Waltz best captures the concept of MAD: "nuclear weapons lessen the intensity as well as the frequency of war among their possessors. For fear of escalation, nuclear states do not want to fight long or hard over important interests – indeed, they do not want to fight at all."[209] Adjusting for inflation, Soviets and Americans spent approximately $10 trillion creating their nuclear arsenals. What they failed to realize is that according to the Prisoner's Dilemma, they would be in a much more favorable scenario if both nations' governments came to a mutual agreement to not develop weapons of mass destruction in the first place. Exactly like the fourth scenario with Prisoners A and B,

they only worsened global stability and created the looming possibility of human extinction.[205]

Congressional Stock Trading Through the Game Theory Lens

To address how game theory applies to congressional ethics, let's consider a hypothetical scenario involving two members of Congress: Senator A and Senator B. Both senators sit on the same committee and are presented with the opportunity to make calculated trades based on insider information. The two lawmakers have two choices: either make the trade and defect, or abstain from participating in insider trading and cooperate. Analyzing a payoff evaluation would recreate the same four situations mentioned above. These separate scenarios can be modeled by a payoff matrix, a common tool used by game theorists.[210] Let's say Senator A trades the stock based on the private information he or she was given in a hearing and doesn't get caught by the SEC (10). If Senator B decides not to trade stocks based on the tip, he or she would be doing the morally right thing but may suffer financial losses (0). The same theory applies if Senator B were the one to covertly defect (10) and Senator A suffered huge losses (0). If they set aside their avarice, they would both realize that the most ideal scenario is if both cooperated. Suppose Senator A and Senator B decided to refrain from trading based on their private hearings, they would both avoid the legal risks that come with it, preserve the integrity of their legislative actions, and most importantly maintain their reputations for future re-election prospects. While this does not provide the short-lived pleasure of making a financially shrewd move, it creates a moderate gain for both (5, 5) as well as

political stability. However, if both Senators A and B defect, it may raise more suspicions and they may not be spared at all, contrary to the prior scenario. If investigators or SEC officials can prove both engaged in illegal trading, they will face legal repercussions similar to that of disgraced lawmaker Christopher Collins. Once the investigators gathered evidence that Mr. Collins lied to the FBI and committed insider trading, it was game over. He faced the full wrath of the justice system and constituents he was supposed to represent, and was dishonorably forced to resign.[156] If there is even the slightest possible chance of this occurring, it is not strategic for Senators A or B to defect, as they would both suffer vast consequences within their lives and careers (-10, -10).

This payoff matrix depicts the possible scenarios of personal gain and potential consequences:

	Senator B Cooperates	**Senator B Defects**
Senator A Cooperates	Both gain moderately (5, 5)	Senator A loses, Senator B wins (0, 10)
Senator A Defects	Senator A wins, Senator B loses (10, 0)	Both lose dreadfully (-10, -10)

Understanding this can allow members of Congress to gain political advantage and develop a much larger strategy for the rest of their careers. The Prisoner's Dilemma shows that even though one-sided cooperation will be the costliest, the risk of defecting and the larger threat of getting caught is not worth it in a two-sided defection

scenario. Both legislators are much better off with two-sided cooperation because they will avoid an inevitable suboptimal outcome.[10] In fact, strategists as far back as third century B.C. have preached the value in being virtuous. Kautilya, an Indian philosopher, wrote "The fragrance of flowers spreads only in the direction of the wind. But the goodness of a person spreads in all directions.[211]" This quote implies that the benefits of superficial qualities are finite, but the power of having an outstanding reputation grants limitless influence – a unique position vied for by many elected officials.

The Repeated Game: Congressional Ethics Over Time

An aspect that is often overlooked is that Congress members sitting on these top-secret committees will not have these circumstances arise just once in their careers but repeatedly over decades. This adds a new layer of complexity to game theory since the Prisoner's Dilemma becomes a game being played repeatedly.[205]

Game theorists around the world were once debating over which strategy was the most optimal for the Prisoner's Dilemma. Little did they know, American political scientist Robert Axelrod had devised a plan to identify the best possible strategy for the repeated game. In 1980, Axelrod announced he was hosting a tournament and invited the most distinguished game theorists to compete. In essence, Axelrod wanted competitors to submit computer programs which he called "strategies". These strategies would have unique code instructing them on when to cooperate or defect based on previous moves of both their own strategy and their opponents.[212] Every

strategy would then compete against other strategies and against a carbon copy of itself. Each match would last for two hundred rounds before the results were posted on the leaderboard. Results were calculated through a point-based system where if one strategy defects and the other does not, 5 points are awarded to the defector. Furthermore, mutual cooperation results in 3 points for both strategies while mutual defection results in a punishment of -1 for both strategies.[213]

Game theorists submitted a variety of strategies, some with more complex code than others. One strategy was simply dubbed "RANDOM" and as the name suggests, would cooperate randomly 50% of the time. Contrary to RANDOM, the strategy UNNAMED was far more sophisticated with seventy-seven lines of code. These strategies encompassed a total of fifteen distinguishable methodologies of cooperating or defecting.[205] Certain strategies were more exploitable than others. One strategy cooperates each round of the game making its success contingent on the opponent not defecting.[214] Other strategies were craftier, with JOSS cooperating at the beginning but then mimicking what the other player did in their prior move but 10% of the time defects to catch the opponent by surprise. Another example is GRAASKAMP, a rather devious strategy. GRAASKAMP defects in the 50th round instead of randomly like JOSS. The functionality of this mechanism was its capability to probe its opponent's moves and result in a change of strategy. Aside from being deceptive, strategies like FRIEDMAN hold a vindictive grudge. At the beginning of each round, FRIEDMAN cooperates, but if their opponent defects a single time it

leads to FRIEDMAN defecting until the end of the game.[205] But by far, the most famous Prisoner's Dilemma strategy was TIT FOR TAT. TIT FOR TAT possessed an advantage for its versatility against cooperations or defections regardless. Essentially, TIT FOR TAT always cooperates in the first round and then subsequently copies the opponent's previous action. In mathematical form, if the opponent "cooperates (defects) on the *n*th round, then TIT FOR TAT will cooperate (defect) on the $(n + 1)^{th}$ round.[215]"

The Winner: TIT FOR TAT and Its Implications for Congress

Remarkably, despite having the simplest code of all entries, TIT FOR TAT won Axelrod's tournament. The following leaderboard shows which strategy attained the highest points on average. The placement results from Axelrod's first tournament are displayed below:

Strategy	TFT	Tideman	Nydegger	Grofman	Shubik	Stein & Rap	Friedman	Davis	Graaskamp	Downing	Feld	Joss	Tullock	Unnamed	Random	*Average Score*
TFT	600	595	600	600	600	595	600	600	597	597	280	225	279	359	441	504
Tideman	600	596	600	601	600	596	600	600	30	601	271	213	291	455	573	500
Nydegger	600	595	600	600	600	595	600	600	433	158	354	374	347	368	464	486
Grofman	600	595	600	600	600	594	600	600	376	309	280	236	305	426	507	482
Shubik	600	595	600	600	600	595	600	600	348	271	274	272	265	448	543	481
Stein & Rap	600	596	600	602	600	596	600	600	319	200	252	249	280	480	592	478
Friedman	600	595	600	600	600	595	600	600	307	207	235	213	263	489	598	473
Davis	600	595	600	600	600	595	600	600	307	194	238	247	253	450	598	472
Graaskamp	597	305	462	375	348	314	302	302	588	625	268	238	274	466	548	401
Downing	597	591	398	289	261	215	202	239	555	202	436	540	243	487	604	391
Feld	285	272	426	286	297	255	235	239	274	704	246	236	272	420	467	328
Joss	230	214	409	237	286	254	213	252	244	634	236	224	273	390	469	304
Tullock	284	287	415	293	318	271	243	229	278	193	271	260	273	416	478	301
Unnamed	362	231	397	273	230	149	133	173	187	133	317	366	345	413	526	282
Random	442	142	407	313	219	141	108	137	189	102	360	416	419	300	450	276

Note. From Rychtář, J. (2017). "*The evolution of cooperation: A recreation of Axelrod's computer tournament"* [Doctoral dissertation]. https://libres.uncg.edu/ir/uncg/f/Hayes_uncg_0154M_12243.pdf.

As can be seen, despite having the simplest coding program out of all the strategies, TIT FOR TAT won the tournament because it abided by a simple mantra: Be nice, but not too nice. In relation to game theory, being nice means not being the first to defect. However, when

challenged by defections, TIT FOR TAT retaliated. After analyzing the results, Robert Axelrod determined that successful strategies share four key traits:

1. Being Nice: Avoiding potential conflicts by not defecting first.
2. Being Forgiving: Returning to cooperation after conflict.
3. Being Retaliatory: Not being a pushover when faced with hostile actions.
4. Being Clear: Establishing mutual trust through consistent, predictable behavior.[205]

The Winner: TIT FOR TAT and Its Implications for Congress

Lawmakers and voters alike can experience substantial benefits from implementing a TIT FOR TAT approach. For legislators especially, TIT FOR TAT's first quality of exhibiting basic integrity helps them avoid conflict and distrust among their constituents. They achieve this through cooperation and ethical behavior. Earning forgiveness themselves from voter disapproval will help members of Congress to return to cooperating, even if they have made unethical trades in the past. Demonstrating genuine change through their *actions* and not idle words will restore their voters' trust, a far more sustainable political strategy for the long term.

Axelrod's third successful quality of retaliation should be used as advance warning. Lawmakers must understand that regulatory bodies such as the SEC will always try to punish unethical stock trading. Furthermore, lawmakers should value projecting clear ethical boundaries regarding their personal portfolios over moral ambiguity

whenever it's most convenient for them. The "defecting when defected on" aspect in TIT FOR TAT can occur by exposing colleagues who are involved in insider trading to the press. In turn, the Congress member gains voter trust and political recognition for not engaging in insider trading themselves while criticizing those who do like Representatives AOC and Ilhan Omar did.[174] [196]

In relation to Congress members, American lawmakers' supporters can adopt TIT FOR TAT style traits. Voters by default display trust when they elect a politician to Congress to represent their interests. Additionally, forgiveness would translate to not allowing one instance of a lawmaker's trading misconduct to drastically influence their political behavior. However, retaliation against their unrepresentative Congress members' actions will discourage future unethical trading. Last but surely not least, voters should prioritize clarity in their requests and complaints to legislators. Voters that clearly engage with their lawmakers will address the issue of conflict-of-interest trading practices. Preventing unclear communications between voters and their Congress members will be crucial to ensuring their interests are met to the best of their representative's ability.

Historical Examples of TIT FOR TAT Success

While the theoretical applications above may seem esoteric and abstract, the world's greatest strategists have unknowingly exhibited the same strategies throughout history. Perhaps the most brilliant leader to ever live, Napoleon Bonaparte was feared on the battlefield.

Praised by self-help author Robert Greene as "the Mozart of warfare," the valorous Frenchman quickly ascended through the military's ranks.[215] Napoleon's actions aligned with the TIT FOR TAT strategy particularly through his diplomatic efforts with European nations. Examples of opposing coalitions included, Austria, Prussia, Russia, the United Kingdom, and many others. On many occasions, the coalitions would often switch between war and peace. As the emperor of France, Bonaparte reciprocated similarly to other nations' actions. If they violated a treaty, he responded in kind. Once they were vying for peace, Napoleon granted them his forgiveness and reciprocated with diplomacy.[216] For instance, when France triumphed over Austria at the Battle of Austerlitz in 1805, Napoleon initially imposed harsh conditions. But after the Austrians' submission, the French government tempered itself and pursued reconciliation until provoked again.[217]

Another example can be seen in Napoleon's treatment of prisoners of war. At a time of bloody warfare, gaining leverage was half of the battle. Amid the French Revolutionary and Napoleonic Wars, male soldiers were detained by British and French regimes. For the mighty emperor of France, the British military's treatment of French prisoners was addressed as an urgent issue in his military campaigns. Great Britain, France's major adversary, was also infuriated that Napoleon had held their war prisoners captive for over a decade. This would later spiral into negotiations known as the prisoners of war (POW) exchange.

In this context, captured POWs were typically exploited as a means of damaging their enemy's morale and forcing surrender out of

troops, making POWs a valuable asset to military supremacy. Napoleon inadvertently used TIT FOR TAT to foster a cooperative environment for his country and his army. Under normal circumstances, French troops cared for captured soldiers with food, shelter, and medical aid. Napoleon intended for these unprovocative practices to encourage enemy forces to treat French prisoners humanely.[218] To ensure this, the emperor of France did everything he could to gather critical information. Bonaparte created lines of communication with his lieutenants, soldiers, and senior officials.[216] It was through these messengers, that he discovered Great Britain was abusing French POWs while in captivity. Such mistreatment was hellish – inhumane living conditions, deprivation of food, and even physical torture. In response to this, Napoleon reciprocated this treatment onto British prisoners. Whenever this would occur, he would proclaim that any further mistreatment from the British would result in similar ramifications for their POWs. France's retaliation intended to deter the British and many other opposing forces from partaking in inhumane practices, restoring a cooperative equilibrium.[219] It must be noted how establishing cooperative equilibrium scenarios are by far the most beneficial for both parties. When both parties cooperate, there is a binding agreement which creates joint benefits.[219]

TIT FOR TAT Across the Ages

Besides Napoleon, many other strategists unconsciously employed TIT FOR TAT's tactics when making high stakes decisions. One of these tacticians was Alexander the Great, King of Macedonia. As the

son of Philip II, Alexander assumed the throne after his father was brutally assassinated in 336 B.C.E.[220] Not long after, in 335 B.C.E. (time is counted backwards), Greek city-states saw an opening to break away from the Macedonian kingdom. However, the most powerful cities like Athens, were skeptical to engage in coups against Alexander. On the other hand, Thebes felt confident in their ability to confront Macedonia's recent change in leadership. And so, the battle of Thebes was born. In spite of the Thebans being overwhelmingly outnumbered, their coup d'état was not stopped as quickly as one might expect. Nevertheless, their vehement defiance would not be enough, as Alexander's army was vigorous in destroying everything in their path, including the city of Thebes. Alexander the Great carried out this brutal punishment for the Thebans to show every other Greek city-state the devastating consequences of attempting to rebel or in game theory's language "defecting".[221]

A point that is often overlooked though, is that Alexander the Great only resorted to these methods when his power was threatened, since it was in his best interest to preserve the peace domestically in Macedonia. In order to minimize the chance of secret schemes to overthrow him, Alexander the Great would lavishly reward his supporters. A prime example was during his conquest of the Persian Empire, when Alexander shrewdly gained the approval of influential Persian officials and satraps in order to ensure cooperation while unseating the regional hegemon. One satrap was Mithrenes, the mighty governor of Sardis, a vital Persian garrison. Instead of acting on irrational hubris, Mithrenes surrendered following the battle of Granicus.[222] As a reward for Mithrenes' voluntary cooperation,

Alexander the Great allowed him to keep his position with senior military command. Greek historian Arrian documents that Mithrenes' privileges from Alexander were as such: "Mithrenes remained with him with all the honours due to his rank." By setting a pattern of rewarding cooperation and loyalty, Alexander incentivized the remaining officials to submit to of his power takeovers as well.[223]

From Ancient Codes to Modern Congressional Ethics

What's more, the concept of TIT FOR TAT dates back even further to 1870 B.C. In the Babylonian dynasty (present-day Iraq), King Hammurabi established the Code of Hammurabi. These revolutionary texts are recognized by historians as the earliest written legal code ever.[224] In the Code of Hammurabi, it references the principles of *lex talionis*, a legal principle of retributive justice more modernly referred to as an "eye for an eye". In fact, Hammurabi himself would preach to Babylonians that unjust crimes should be reciprocated with harsh punishment. Despite modern societies finding retaliation to that extent unacceptable, the idea of fairness and reciprocity are still present today.[225]

Payoff Evaluation for Modern Legislators

In summary, this comprehensive strategy assessment clearly identifies TIT FOR TAT as the best avenue for those in power to retain their influence. However, if some lawmakers still remain unconvinced, they must consider their payoff evaluation. In the context of game theory, the player's payoff is the value obtained from their potential outcome

of the game.[220] Because while it is apparent that many members of Congress serve on confidential committees, acting on asymmetric information will be unwise for legislators specifically. Just because elected officials possess more material information, attempting to financially benefit from it would jeopardize the core source of their power: The people.[226]

When America's forefathers drafted the Constitution in 1787, they emphasized the importance of popular sovereignty. This founding principle is reflected in the Constitution when they stress that members of Congress can only be elected by the people. Only then, could elected representatives amend the Constitution and propose or amend laws.[227] In addition, the principle of a "social contract" originated from John Locke's second of the *Two Treatises of Government* in 1690. Essentially, the social contract stated that the government had an obligation to protect the natural rights of its people. However, if the contract is violated by elected officials, the public can justifiably overthrow the government.[228] These two principles translate into something very cardinal for members of Congress – their constituents' approval is a precondition of power preservation.

Risk vs. Reward: The Congressional Calculation

Even though legislators can directly influence the legal system by altering how people, government agencies, and companies behave, they must remain wary of being overthrown. In particular, when Congress members choose to trade stocks based on nonpublic

information, they must strongly deliberate over their payoff. Game theorists coined the term "payoff" as the value gained from the potential results of a scenario.[220] Obviously the most ideal payoff for a lawmaker would be to have their cake and eat it too, but that's not necessarily a sustainable strategy. Many currently opt for trading stocks based on insider information and most have retained their positions. But once the majority of educated voters understand their representatives and senators are putting them second, they will swiftly oust them.

When analyzing their payoff, members of Congress should consider these three factors:

1. Financial prosperity: When evaluating how abstaining from insider trading will affect their financial prosperity, Congress members should already be shrewd enough to hire a financial advisor or even a cadre of them. For the most part, representatives and senators make an average of $174,000 annually – more than enough to live comfortably.[229] And chances are most of these lawmakers are not foolish enough to invest primarily in one market or stock… Meaning that if one of their investments were to take a plunge, it would not financially devastate them. Given that this is the case, there is no need for legislators to take the risk of trading based on asymmetric information.
2. Legal consequences: Congress members engaging in insider trading should deliberate over whether saving or making a couple hundred thousand dollars would be worth years in prison. Now that we have established that most financial losses will not be

detrimental, legal consequences stay with a convict for the rest of their lives. Looking back to Chapter 2, the SEC and federal government have been strengthening their deterrence capabilities against insider traders as more scandals have become apparent. In order to preserve market liquidity and efficiency, regulators have made the penalty for insider trading steep. If you are found guilty of insider trading in the United States, you can be forced to pay up to $5 million in fines and serve 20 years in prison.[230] With the SEC and press already closely scrutinizing lawmakers' every move, the stakes have never been higher. Prosecutors are always eager to put a high-profile politician behind bars if they manage to prove they acted upon material, nonpublic information. The harsh legal penalties that could be imposed from violating the SEC's nebulous regulations alone do not justify the monetary reward for Congress members.

3. Re-election prospects: Perhaps the most important payoff for most elected legislators is their future political ambitions. Political dynamics will play a role in determining whether voters continue to vote for that Congress member or defect. If the lawmaker consistently fails to represent the interests of their constituents by trading on privileged knowledge, they are highly likely to defect and elect someone who will.

The Tragedy of the Commons: Eroding Public Trust

This phenomenon is similar to the Tragedy of the Commons, a scenario where individuals act solely for their own interests, in turn depleting a shared finite resource (despite harming the interests of the whole group). The concept was popularized when ecologist Garrett

Hardin used the model to show the effects of environmental degradation in the 1968 edition of *Science Magazine*.[231]

Picture this: you own a house around a lush green pasture, but you have to share it with your three fellow shepherds. Furthermore, each of you has a cow out on the field to graze. Since the pasture is plentiful in size, you arrive at the conclusion that it would be more beneficial if you had not one cow, but two. The reason being there would be a higher payoff when you go to sell your produce and livestock at the farmers market. Hence, you and the other three shepherds each buy a second cow, and let them onto the pasture. Even so, the potential for more payoff from your shared agricultural landscape gets the better of all of you. Now it's three cows per shepherd, then four per shepherd… Before you know it, there is no more space left for your livestock to graze. The land becomes infertile, and the pasture becomes unusable for you and your fellow neighbors. Scarce resources become depleted due to the Tragedy of the Commons – evidently, it's best to avoid it at all costs.[10]

Likewise, members of Congress serve the public's wishes. For this analogy, the "commons" symbolize the public's trust in their elected officials and democracy as a whole. When lawmakers exploit their access to privileged information, they act in their own financial interests. The collective harm from this act is the erosion of the democratic process and the public's trust. As a result, voters feel disillusioned, feeling as if their representative is corrupt and ignores their wishes. The fact that Congress members are trading for themselves and not prioritizing the public's interests, indicates a betrayal of voter trust. The same way in which the pasture was

destroyed from overgrazing, democracy can also be destroyed by excessive avarice. Repeated instances of lawmakers' trading stocks based on insider information will create cynicism and disengagement among their constituents. This newfound distrust means lower voter turnout, minimal civic participation, and undermining democratic institutions. In the end, questionable trading activities by members of Congress are simply not wise, as they erode the root source of their granted power – the people's trust.

Case Studies: Politicians Who Lost Public Trust

Examples of this root power being seized by the people can be seen throughout political history. For example, when Barack Obama made history as the first African American man to be elected as America's president in 2008, his Senate seat became vacant. Because of this, Illinois Governor Rod Blagojevich was now in a powerful position: He could appoint whoever he wanted to replace Obama's Senate seat. Seeing an opportunity to capitalize on, Governor Blagojevich attempted to auction off Obama's seat to the highest bidder. According to a 76-page FBI affidavit, wiretaps showed that Blagojevich had schemed to sell the vacant Senate seat for his personal financial gain. "I want to make money" Blagojevich said in a truly appalling manner. Additionally, the governor was negotiating for his wife to be placed on companies' boards with an approximate $150,000 annual pay in director's fees.[232] Governor Blagojevich's misconduct did not even require his voters to oust him, as the legal system impeached him from office. Blagojevich was stripped of all his power and served a 14-year prison sentence for his federal corruption

charges before eventually being commuted by President Trump. Despite his removal not coming from an election, the political scandal played a role in future elections in Illinois and the public's backlash against corruption.[233]

This political phenomenon of root power being seized due to corruption in America isn't isolated. Around the same time as Blagojevich's scandal, Senator Ted Stevens (R-AK), was being tried in Washington D.C. on criminal charges of failing to report gifts for his house's renovations from the VECO Corporation worth a quarter million dollars. Stevens' corruption conviction came at the worst possible time – election season. With his conviction becoming public knowledge just days before the electoral polls opened, Stevens' chances of winning re-election were looking unfavorable.[234] Stevens' corrupt perception did end up losing him the senatorial election to Democratic Mayor of Anchorage, Mark Begich.[235] Senator Stevens' corruption charges were later dismissed because of prosecutor misconduct. The prosecution's unacceptable legal actions were revealed in a report detailing how crucial documents and evidence were hidden by two prosecutors from the DOJ.[236] Although Stevens' conviction was later overturned, it was already too late. The fact that he had been accused of corrupt crimes influenced voters' defection from him. Moreover, Senator Stevens was not an ordinary lawmaker, as he had served from December 24, 1968, to January 3, 2009 – the longest period in office ever held by a Republican Senator.[235] Stevens' years of service to Alaska in the Senate were overlooked when voters ruled him out as a corrupt politician, truly showing that no politician is safe when portrayed as corrupt.

To continue the trend of "allegedly" corrupt politicians being castigated by the public and being held accountable through elections, Congressman David Rivera (R-FL) confirms this. In 2012, Rivera was accused of falsifying his financial disclosure documents with the intent of reporting more income than permitted by his salary.[237] What's more, Representative Rivera violated ethics guidelines by hiding a $1 million contract with a Florida-based gambling company and inappropriately using his campaign funds. In response to the federal investigation placed on him, Rivera's campaign mounted a vehement defense claiming, "As he has always maintained, Congressman Rivera has at all times acted in compliance with both the letter and spirit of Florida and federal campaign finance laws and has timely and properly reported all personal income."[238] The rookie lawmaker's cry of innocence would not be enough because Floridians had already made up their mind. Without even being found guilty, Representative Rivera's political career grinded to a halt when he lost to Democrat Joe Garcia shortly after his investigation.[239]

Learning From History: Strategic Implications for Legislators

These three cases in the twenty-first century of America exemplify the danger that a corrupt perception poses to politicians, typically resulting in the loss of power even without formal legal convictions. Overall, many common themes should be observed from these instances.

First, perception versus reality does not matter as much as one may think. In all three situations along with many more, the mere

perception of the politician possibly being corrupt had a more immediate and deleterious impact on their electoral outcomes than the actual legal results. Second, the media and timing of elected officials' scandals crucially shape voter behaviors. As can be seen, the sudden and abrupt negative publicity these politicians faced caused lasting damage. Finally, the restoration of the public trust is a dilemma all accused officials face. For instance, once the public trust of Stevens and Rivera was lost, it was nearly impossible to repair.[236] [240] Despite all the clarifications made by their campaign spokespersons or even the legal system, the voters were already disenchanted.

From a Congress member's perspective, the threat of losing access to their source of power should be met with strategic political implications. To safeguard their power, members of Congress should prioritize three objectives. The first should be maintaining proactive transparency with their constituents. In doing so, lawmakers are able to create more reasonable doubt in the minds of their supporters since they appear to have nothing to conceal. If transparency regarding ethical conduct is executed properly, lawmakers have a substantially higher likelihood of preventing any allegations of corrupt activity. Second, crisis management strategies are a must in order to mitigate the impact of any allegations or investigations. Campaign officials should have clear communication channels and swift corrective actions on standby when needed. Third is preserving the lawmaker's long-term reputational health. Keeping a reputation of integrity in a political sphere plagued with corruption distinguishes ethical lawmakers and creates long-term political viability, as voters focus more on scandals rather than legal proceedings. When these

strategic decisions are made, members of Congress have a much higher chance of holding a longer tenure and not being as susceptible to new political rivals.

Self-Interest as the Driver of Reform

It's clear that the majority of this chapter has been dedicated to incentivizing elected lawmakers to act in the people's interests, and in turn, their own interests. Nevertheless, the chapter will conclude with how this strategic mindset can be spread throughout Congress and by activist groups. The key insight is this: when asking an individual in power for help and honorable work, you must appeal to lawmakers' self-interests to ensure reform. The only way for this to be achieved is to demand legal reforms of America's current insider trading regulations for Congress members – or suffer the consequences of being held politically accountable. The psychological threat of losing their political tenure alone will be enough to drive change of the same vigor in which the STOCK Act was passed.[144]

By using lawmakers' own interests, particularly their desire to avoid losing re-election, voters and even lawmakers themselves can influence other lawmakers to drive reform. This starts by highlighting voter sentiment and educating them about the prevalence and impact of insider trading among Congress members. The polling and data will be enough by itself to incentivize lawmakers if it becomes a mainstream issue. For instance, exposing the poll from the Trafalgar Group would stir up debates in the Senate and House of Representatives.[3] If polls showing significant numbers of voters

disapprove of insider trading by members of Congress, the potential for voters to vote against incumbents becomes a grave danger to elected officials.

Self-Interest Drives Cooperation

Centuries ago, nations employed the same strategy of appealing to self-interest rather than the mere kindness of other nations. It was 1543 and a trio of Portuguese explorers aboard a Chinese ship arrived at Tanegashima, a tiny island in close proximity to Kyushu. Not long after in 1548, Francis Xavier, a Jesuit from Goa attempted to convert the people of Japan to Christianity. Following Xavier's visit, an influx of Portuguese missionaries tried introducing the Japanese to Catholicism. After some time, locals started referring to them as *nanban* which translates to "Southern barbarians". In a sense, the name was fitting because the Portuguese traders brought tin, lead, gold, silk, wool and cotton textiles, among other valuable items to Japan. In exchange, the Japanese would export swords, lacquer ware, silk, and silver to Portugal.[240] As a result of this, Portugal enjoyed the benefits of a monopoly on Japanese trade with Europe. Over the years, missionaries also achieved success in proselytizing many of the Japanese people. However, this prosperity would be abruptly halted once Emperor Ieyasu discovered the Portuguese had been vilifying him. Around the early seventeenth century, a large number of Dutch traders began to arrive in Japan.[241] When this happened, Ieyasu wasted no time in outlawing Christianity in 1641, essentially replacing Portuguese traders. The Japanese and the Dutch experienced a more positive relationship as the Dutch did not care for proselytizing Japan.

For a long time to come, the Japanese exclusively traded with Holland and China until 1859.[241] Although the Japanese and Dutch shared no cultural traits, they nurtured a productive economic relationship since they both cared about one thing: self-interest. The common man and the elite lawmaker have no boundaries of communication once self-interest is valued. If advocates appeal to elected officials' personal interests, they can circumvent all boundaries of elitism and disregard for those without influence.[242]

In fact, even Aesop, the famed Greek fabulist, discussed the power of appealing to someone's interests rather than expecting a good deed from their heart. Consider the following tale, "The Peasant and the Apple-Tree," which perfectly encapsulates the concept that self-interest is the most powerful motivator for political change – particularly among members of Congress.

THE PEASANT AND THE APPLE-TREE

A peasant had in his garden an Apple-Tree which bore no fruit but only served as a harbor for the sparrows and grasshoppers. He resolved to cut it down, and taking his axe in his hand, made a bold stroke at its roots. The grasshoppers and sparrows entreated him not to cut down the tree that sheltered them, but to spare it, and they would sing to him and lighten his labors. He paid no attention to their request, but gave the tree a second and a third blow with his axe. When he reached the hollow of the tree, he found a hive full of honey. Having tasted the honeycomb, he threw down his axe, and looking on the tree as sacred, took great care of it. Self-interest alone moves some men.

FABLES, AESOP, SIXTH CENTURY B.C.[242]

Aesop's fable shows the importance of understanding lawmakers' motivations. Activists must demonstrate the personal benefits that lawmakers can potentially reap from supporting financial ethics reforms to drive legislative progress. Once one Congress member is convinced, the process only gets easier. That lawmaker will spread the word to other lawmakers and likely rally a group of representatives or senators in favor of sponsoring a bill to support insider trading reform.

In essence, the same way that the peasant was initially apathetic due to the lack of visible benefits from his apple tree, most lawmakers currently see little personal advantage in sponsoring congressional insider trading reforms. Many are likely focused on the immediate impacts on their financial gains, overlooking the broader impacts of their immoral actions. Rather, change seekers should show lawmakers the honeycomb, in this case being public approval and electoral success. Once it has been made clear that their voters value transparency and integrity, lawmakers can be motivated to champion reforms that ultimately serve both their interests and the public good – a win-win situation.

CHAPTER

6

ONE FOR ALL

Now, more than ever before,
the people are responsible for the character of their Congress.
If that body be ignorant, reckless, and corrupt,
it is because the people tolerate ignorance, recklessness, and corruption.
If it be intelligent, brave, and pure,
it is because the people demand those high qualities
to represent them in the national legislature.

– James Garfield, 1831-1881[124]

Throughout human history, philosophers have debated what qualifies as a morally virtuous act. While evaluating the intricacies of congressional insider trading, it's imperative to discuss this based on the philosophical concept of utilitarianism, more specifically John Stuart Mill's interpretations of its applicability to governments.[12]

The Origins of Utilitarian Thought

Before understanding how Mill's ideologies uphold the regulation of congressional insider trading to serve the interests of the governed, we must initially comprehend how utilitarianism became popularized and what the moral theory deems as a righteous act.[12] Although the term "utilitarianism" was not officially coined yet, evidence of utilitarian thinking can be traced back to ancient China. As early as 400 B.C.E., a philosopher named Mozi wrote concepts strikingly parallel to contemporary utilitarianism. He often used the Mandarin phrase *jian'ai*, meaning "universal love". Mozi's writings are understood by philosophers to mean impartiality when acting, as the Mohists believed feelings of partiality were the main obstacle to moral actions.

Unbeknownst to Mozi, English philosopher Jeremy Bentham would be credited by historians as the "father of utilitarianism" when he authored *Introduction to the Principles of Morals and Legislation* in 1789. In his writings, Bentham establishes the "principle of utility" as a "principle which approves or disapproves of every action whatsoever, according to the tendency it appears to have to augment or diminish the happiness of the party whose interest is in question". The jurist

would later invent the revolutionary philosophical term "utilitarianism" in a letter he wrote two years later.[243]

At its core, utilitarianism is one of four major Western moral theories which states that an act's morality is determined not by its intent, but by the utility of the action. Utility means the greatest amount of benefit for the greatest number.[11] The most famous philosopher to build off Bentham's concepts was John Stuart Mill, a nineteenth century British philosopher. Mill's "greatest happiness principle" posits that morality means providing the best for the most people, essentially serving as a fundamental perspective for assessing the ethical dimensions of Congress members' political and financial behaviors.

As a member of the United Kingdom's Parliament, Mill proposed democratic accountability as the highest priority for rulers while elaborating on Bentham's *Plan for Parliamentary Reform*. Mill details in his *Essay on Government* that everybody acts primarily to serve their own interests. On the other hand, the objective of a government is to promote the interests of the governed. As a result, Mill concludes that rulers or politicians are morally obligated to pursue the intended mission of the government. However, if the appointed official's interests do not align with those of the people, they should be held democratically accountable and punished for such acts.[12]

Applying Utilitarian Principles to Congressional Trading

By examining congressional traders through this principle, we can critically determine that the actions of lawmakers do not coincide with the public good and are simply being subverted for their own

personal gain. Utilitarianism inherently requires lawmakers to prioritize collective welfare over individual benefit. Undoubtedly, members of Congress are at a vantage point from their ability to access privileged information, having an immense effect on the stock market. Mill's utilitarian beliefs would say that politicians who trade on this information for financial profit undermine the majority of people's trust and skew a prosperous lifestyle towards the elite, instead of serving the larger interests of everyone.

In the context of Mill's *Essay on Government*, democratic accountability is a necessary mechanism. For Congress members to act in the interests of the people, as Mill proposes, everything they do should be subject to scrutiny and consequences – particularly when engaging in insider trading. By prohibiting or stringently regulating stock trading among legislators, we enhance their accountability. This newfound accountability mandates their decisions to be in the mindset of a utilitarian rather than an egoist. Egoism is a theory in which everyone should morally pursue their own hedonistic wishes. Preventing egoism will protect representative democracy for millennia. Utilitarianism is strict and clear on the notion that people commit terrible acts. But if we can remedy them or aid those in need, we have a moral obligation to do so, even if it leads to a less ideal scenario for ourselves.[244] For lawmakers, this aid could be through sponsoring bills for the less fortunate that benefit Americans economically, socially, and politically.

The Utilitarian Case for Retail Investor Protection

Utilitarian commitments not only require members of Congress to abstain from insider trading, but also dictate that the financial trading regulations they make for the rest of society create equal opportunities for retail investors and institutional investors. Institutional investors are powerful firms that move hundreds of millions of dollars on behalf of the rich, with many experienced financial analysts and technology evaluating the risk of each trade. In contrast, retail investors are individuals who make personal investments on their own accord, almost always possessing less money and resources than institutional investors.[245]

In a utilitarian world, Congress members should focus on making a more accessible market to retail investors over institutional ones when drafting financial regulation laws. This policy approach aligns with the "greatest happiness principle" as articulated by Mill.[12] Retail investors, who are the majority of the population, deserve to have their needs met and protections administered just as institutional investors do.

During the fiscal year of 2020 to 2021, 46 million new brokerage accounts were created by American retail investors. This substantial increase of 80% in a two-year time span shows the growing eagerness of those who are governed to participate in financial markets. Collectively, 105 million individual investors trade stocks – a cohort equivalent to 32% of America's population.[246] Hence, while reforming their own ability to trade stocks, lawmakers should see to it that financial markets become more inclusive, fair, and transparent, thereby benefiting a larger portion of society.

When retail investors are prioritized in these regulations many benefits arise like enhanced market fairness. Bridging the gap between the disparities in information between individual and institutional investors nurtures a fair opportunity for *everyone* to succeed in the stock market. When financial regulations specifically make room for retail investors, this fosters a more widespread confidence in the American financial system. Grasping onto this trust is critical for the overall health of markets, as it encourages further participation from ordinary citizens. As a result, the United States will experience more economic growth and prosperity.[247]

Additionally, when retail investors are given financial protection, lawmakers are assisting in the reduction of wealth inequality in the U.S. since the systematic issue of income gaps needs reform. As of 2024, the top 10% of households financially speaking collectively own 67% of household wealth in America. At the same time, the bottom 50% of households only owned 2.5% of national income.[248]

Aside from creating economic equity, utilitarian financial reforms would prevent systemic risks. Dire consequences present themselves if institutional investors are not held on a leash. If these massive investors are given free reign, they could potentially engage in predatory practices that may result in the systematic destruction of the financial marketplace as we know it. Putting retail investors first while policy making will lead to the implementation of regulations that alleviate risky behaviors by institutional players, thereby providing systematic stability to all investors. Finally, and most importantly, retail investors will become more empowered to participate in

markets if legislators create regulatory laws with them in mind. A more supportive marketplace for individual investors translates to lawmakers having directly ameliorated the quality of life and financial wellbeing for many families.[247]

The Historical Power of Retail Investors

What's equally important to realize is that retail investors wield all the real power in financial markets. Remarkably, individual investors have actually teamed up and defeated the tyrannical financial practices of some of the world's largest financial institutions. If ordinary investors are capable of holding institutions accountable, what's to say they won't hold congressional investors with asymmetric information accountable? Nothing - the power is in their hands, and it always has been.

To set the stage, hedge funds have been dominating the American stock markets since their debut. Owing to their high net-worth clientele, hedge funds worldwide currently manage over $4 trillion worth of assets, with 65% of these firms being based in the United States.[249] These mammoths have had enormous amounts of influence over the market for centuries and made markets less accessible to ordinary investors. Historically, whenever these financial giants disapprove of a particular company, they have conjointly orchestrated the cratering of many stocks through short selling.

Understanding Short Selling

Short selling is a common trading strategy leveraged by investors who predict a stock will lose value. Essentially, whenever a security's price lowers, short sellers make a profit. Consider this scenario of a short seller: When Investor A (Stock Owner/Lender) owns one share of stock valued at $100 and decides to loan it to Investor B (short seller). If the price goes down to $70, the short seller (Investor B) buys the share back for $70, returns it to the lender (Investor A) and makes a profit of $30. However, the worse scenario for Investor B would be if the price jumped up to $150, meaning the short seller faces a loss. Investor B must buy the share back for $150, losing $50 per share (plus fees). Losses or profit on short selling are potentially unlimited because there is no limit on how high or low a stock's price can go.[250]

Case Studies in Institutional vs. Retail Power

A more recent example of this is with Herbalife, a nutritional-supplements company. As manager of the New York City based hedge fund Pershing Square Capital Management, Bill Ackman strongly disapproved of Herbalife, labeling the company a "pyramid scheme" in 2012. Ackman's bet caused the stock to plummet 20% in just three days before recovering again.[251] Later down the road, the Federal Trade Commission (FTC) launched a civil lawsuit against Herbalife stating the company had "deceived customers into believing they could earn substantial money selling diet, nutritional supplement, and personal care products." This dealt a major blow to Herbalife, forcing them to pay a $200 million fine in exchange for the FTC to stop characterizing the company as a pyramid scheme. Of course, Ackman made millions from his bet before backing out in 2018.[252]

Still, there are limitations to the hedge funds' influence over certain stocks. Since many hedge funds had been investing in internal combustion engine car manufacturers for decades, they felt there was no room for electric vehicles in the stock market. Instead of welcoming innovation, they waged war on this automobile revolution, particularly on Tesla Motors. As a group, hedge funds shorted 97 million shares worth around $22.4 billion in 2024. Unfortunately for them, innovation knows no bounds. Tesla's electric cars were so successful, hedge fund short sellers lost $3.5 billion just two days after Tesla released its performance reports.[253] So while hedge funds are able to dictate the values of certain stocks to some extent, they do not have complete control over the market.

The Birth of Retail Trading Democracy

Everything changed in 2013, when a man by the name of Vladimir Tenev aspired to create more accessible markets. Tenev and his partner Baiju Bhatt would go on to found Robinhood, a free trading app that allowed retail investors to participate in the stock market. On their website, Robinhood claims to "democratize finance".[254] After all, they would quite literally tweet "Let the people trade" to promote their aim for financial equity.[255] As the name suggests, the company idolized Robin Hood, the outlaw who stole from the rich and gave to the poor. To a less extreme degree, Robinhood gave ordinary investors a free platform which welcomed a plethora of inexperienced and young traders who didn't need a Wharton degree just so they could trade.[256]

Along with the birth of Robinhood came the creation of a new sub-Reddit community called "r/wallstreetbets," currently hosting a staggering 16 million members.[257] These unorthodox retail investors who called themselves "degenerates" were volatile financial players hoping for prodigious returns in the shortest possible time. Most refrained from buying stocks and instead resorted to very aggressive trading tactics through highly leveraged trades. The cohort of traders also use the strategy of boosting "meme stocks" in which the trading volume is contingent on repeated social media attention.[258]

The GameStop Revolution

But what occurred in January of 2021 would showcase that the people, when on a united front, can successfully overthrow the world's most powerful institutional investors, albeit momentarily. The company whose stocks were in question was GameStop Corp (GME), a leading brick-and-mortar video game retailer. By 2020, hedge funds speculated that GME would inevitably drop in share values. The reasoning behind this was straightforward: Video games could now be purchased online, making in-person video game retail stores obsolete. Anticipating a decline in the upcoming years, hedge funds actively bet against GME's success by heavily short selling GME during 2020.[13]

At the start of 2021, the amount of shares being shorted compared to the total public float was a whopping 140%. In fact, this short trend was so profound that more shares had been shorted than were even in circulation! As a consequence of the hedge funds' fierce avarice, they had become vulnerable to a slew of Redditors.[259]

Through a coordinated effort, Reddit users purchased shares of GME in large volumes, successfully causing a short squeeze that would create ripples across the market.

A short squeeze is a market phenomenon where an unprecedented rise in value of a heavily shorted stock leads to many short sellers exiting their financial positions. Because of their swift exit, the price of the stock instantaneously skyrockets.[260] Major hedge funds like Citron Research and Melvin Capital who had shorted GME were forced to back out or lose billions. As for the majority of short sellers, they lost $1.2 billion due to the 2000% surge in GME prices.[260]

At last, David had picked up his slingshot and perfectly launched the rock into Goliath's head. Hedge funds were utterly dumbfounded, since short squeezes typically only happen from major players on Wall Street. This time, it was a group of internet trolls who collectively wanted to give avaricious firms a taste of their own medicine. The financial impact these retail investors had made was so significant that hedge funds had to be bailed out at ridiculous rates. Steve Cohen and Ken Griffin injected $2.75 billion into Melvin Capital to remedy the firm's 30% year-to-date losses. And the short squeeze wasn't only affecting GameStop. A multitude of heavily shorted stocks had been bought up by the Redditors so much so that Bed Bath & Beyond was up 58%, BlackBerry 48%, and AMC 39%.[261] At one point the economic issue became so severe that Goldman Sachs issued a stern warning saying that if Redditors did not sell their GME shares soon, the stock market could collapse.[262]

Robinhood's Betrayal

What happened next would undermine Robinhood's utilitarian values and demonstrate an outrageous bias towards institutional investors. Nearing the end of January, Robinhood chose to restrict trading of GME shares, which capped any further gains for retail investors. As for hedge funds like Melvin Capital, they would be spared billions in losses since Robinhood capped any further losses for short sellers. To retail investors, this was seen as a shameless betrayal of trust because Robinhood clearly sided with hedge funds and institutions over the common man like they had promised.[263] Redditors who were now livid instantly vilified Vladimir Tenev for directing the app in a morally ambiguous way. With Tenev's antagonization came a flurry of collusion allegations. Allegations against Robinhood became so prevalent, that Congress forced him to testify before a House committee to maintain his innocence. SEC officials also probed Robinhood over whether their involvement was manipulative fraud or if it was done independent of any hedge funds' influence.[264]

Robinhood's betrayal of ordinary investors triggered both sides of the political spectrum to lambaste hedge funds and Robinhood's decision to cap GME purchases, enraging the public even further. Conservative Donald Trump Jr. tweeted, "It took less than a day for big tech, big government and the corporate media to spring into action and begin colluding to protect their hedge fund buddies on Wall Street. This is what a rigged system looks like folks!" Representative AOC wasn't too happy about the state of affairs either, tweeting "Gotta admit it's really something to see Wall Streeters with a long history of treating our economy as a casino

complain about a message board of posters also treating the market as a casino."[256]

Implications for Congressional Accountability

The GameStop short squeeze significantly disrupted the status quo of the monopolized financial world of hedge funds. Once those being governed understand that they reserve the ability to challenge massive institutional investors, that's a genie that cannot be kept within his lamp. This event not only highlighted the disparity of financial equality but also showed that institutional investors must be held accountable.[13] Members of Congress who engage in insider stock trading are partaking in the same family of schemes hedge funds use to gain an unjust advantage over retail investors. From a utilitarian's perspective, this imbalance conflicts with lawmakers' duties to ensure their actions contribute to the overall well-being of their constituents. It would be wise for Congress members to abide by their utilitarian obligations and abstain from insider trading because just as internet trolls were able to topple billion-dollar institutions, a collective retail investing effort can easily destroy lawmakers' financial portfolios.

Similar to the GameStop short squeeze, retail investors can organize and execute coordinated investment strategies that challenge the insider trades of Congress members. If they are feeling particularly vindictive, retail investors can collectively hoard or dump stocks to disrupt market dynamics for all of the lawmaker's investments, contrary to how their clairvoyance had been anticipating. Through this medium, advocates for congressional reform can make a bold

statement to exert their influence over their representatives, essentially increasing the public's political and economic influence.

Technology as a Democratic Force

In a rapidly expanding digital age, a myriad of industries are being forced to adapt and, in the process, democratize the nature of the industry. The financial industry is by no means immune to this revolution, and many apps have stemmed as innovation solutions to optimize trades. One of these innovations was made by four men who came together from vastly different industries. Brian Schardt, Scott Schardt, Aaron Langley, and Christopher Josephs all sought out to make everyone's trading activity more transparent and publicly disclosed. Their first venture was called Iris, a social investing app the men founded in 2020. The appeal of Iris to investors was its unique ability to track the user's friends' investment portfolios. The group's technological disruption would eventually spillover into political figures. By 2022, the men had created a well-followed X account with the username "Nancy Pelosi Stock Tracker." As the name suggests, whenever the representative would make trades, they would send out a tweet revealing it to the public.[14] Furthermore, the account would often make tweets like "Pelosi's net worth has increased by $140,000,000 since becoming Speaker in 2007. That's an average of $9.3M/year on a $200k salary," to fuel the public's rage.[265]

The software behind this portfolio tracking account and Iris started to become requested for high-profile investors and real-time trades. To meet the wishes of an expanding consumer base, the group

founded Autopilot, an app specifically designed to "democratize wealth management." The developers accomplished this by creating a stream of information for retail investors to automatically make stock trades when politicians or top traders do. Some examples of portfolios Autopilot tracks include Nancy Pelosi, Dan Crenshaw, Warren Buffett, Jim Simons, Michael Burry, along with many others.[14] To be precise, Autopilot alone has tracked 61 individual politicians and tracked trades totaling $65 million in value. Since it's been made apparent that members of Congress are the best traders, Autopilot eliminates information asymmetry for ordinary investors looking to get similar returns.[266]

Autopilot's Revolutionary Potential

Apps like Autopilot will contribute to more coordinated investment actions by retail investors, to protest against an institution or corrupt lawmaker. First of all, the newfound access to information will allow for retail investors to identify their targets and collectively make investments. Through Autopilot's user interface, ordinary investors are able to coordinate their actions more effectively. The automation of tracked trades performed by Autopilot can be altered to disrupt the Congress members' trades instead of replicating them. Autopilot's automation will enable groups of retail investors to implement their rebellious trades swiftly, supercharging the impacts of their coordinated attacks.

Autopilot's live information feed will provide them with real-time market alerts, educating retail investors about market trends,

news, and sketchy insider trading activities by members of Congress. Timely updates like these will actively allow ordinary investors to quickly react and adjust their strategies if necessary. More mainstream use of Autopilot translates to further pooling of financial resources. For instance, if a reputably corrupt politician makes an unusual trade in large volumes, retail investors can collectively take opposite positions in specific stocks, similar to the GameStop short squeeze. The final benefit of Autopilot retail investors can leverage is its ability to unify. Users of Autopilot can build a community of kindred investors who demand a future of ethical investing, especially by members of Congress. This sense of community can empower many to find resolve and protest for the liberty to trade in an equitable marketplace.

Ultimately, the importance of Congress members committing to utilitarian principles in their financial conduct cannot be overstated. The ramifications of failing to meet these morally just benchmarks are dire. When legislators' insider trading becomes too prevalent, public trust is eroded and therefore will empower ordinary citizens to revolt against their representatives. If not through political means, retail investors can express their disapproval through financially sabotaging the trades of corrupt lawmakers. Members of Congress must recognize that their governmental obligations go beyond ensuring their own personal enrichment but instead focus on contributing to a thriving broader societal outcome.

CHAPTER

7

MARKETS, MORALITY, AND MACHIAVELLI

If you want a picture of the future,
imagine a boot stamping on
a human face – forever.

– George Orwell, "Nineteen Eighty-Four[267]"

Whenever we feel as though we lack control over people and events, an intolerable sensation engenders within us, making us feel miserable as a result of our powerlessness. The axiom that no one desires less power; everybody yearns for more holds true. It is for this exact reason that politicians are always striving to increase their influence.

That universal desire begs the question: If elected officials had unlimited power, would they still act virtuously? In a more general sense, Glaucon, a philosophy student of Socrates, debated with him over why people act righteously. As told in Plato's *Republic*, Glaucon discusses this with Socrates by making two famous claims. First, people act justly out of *unwillingness*. Glaucon elaborates further by saying that the main reason people act and abide according to the laws of virtue is because they are concerned with preserving their reputations. Second, people who do so are acting reasonably.[268] To support his two claims, Glaucon recounts an allegory called "The Ring of Gyges".

The Ring of Gyges: A Timeless Warning

According to the story, in the ancient kingdom of Lydia, there lived a lowly shepherd named Gyges. Gyges, who spent most of his days tending to sheep, did not live a luxurious life but was still able to make a living. One day, when he was out in the field with his sheep, he felt an unexpected rumble. It turned out to be an earthquake. This wasn't your ordinary earthquake: it was so intense that the entire ground collapsed. As a result, Gyges fell through a chasm and landed on the ground. As he got up, he noticed something spectacular: a

lustrous bronze door with a horse carved on it. The magnificently crafted door was left ajar. When Gyges opened the door, he was met with an enormous coffin. Inside he found the corpse of a giant, but something about his hand commanded attention. On the giant's finger was a beautiful golden ring, which Gyges pocketed before seeing himself out. That night, he accompanied his fellow shepherds while playing with his new jewelry. While pointlessly twirling it, something unfathomable happened – he had vanished! Much to the surprise of the shepherds and Gyges himself, he now possessed the supernatural ability to become invisible. Invigorated by his newly attained power, wicked plans arose in Gyges' head. To successfully execute his plan, Gyges sought out to become a messenger for the king of Lydia. That way, he would have easy access inside the palace undetected, a crucial part of his scheme. Once inside, Gyges had seduced the queen and persuaded her to betray her husband. Thereafter, the lowly shepherd committed regicide and ruled Lydia from there onwards.[269]

Power Without Accountability

It is astonishing what power does to some men. Gyges' actions when given an all-powerful ring illustrate a fundamental part of human nature: the tendency to act wrongfully when one can do so without facing the repercussions.[270] In the case of lawmakers, the implications of this story become extremely worrisome. If Congress members are able to commit unethical acts such as insider trading, it's analogous to Gyges' circumstances: They have acquired the power of "immunity" surrounding their unjust acts. Hence, the duty of the citizens to take

their ring of immunity off. Taking the ring off is defined as limiting the trading powers of legislators due to their access to privileged intel. However, if lawmakers are allowed to continue insider trading, the effects will be antidemocratic. A state of government where those governing can manipulate laws and regulations to enrich themselves free of punishment establishes an unjust state. In these circumstances, the powerful further entrench their positions at the expense of the public good. If members of Congress are left unchecked, there could be dire consequences for democracy as a whole. When these legislators who are meant to serve the public are emboldened to engage in corrupt activities like insider trading, democratic backsliding is imminent. Once elected officials are let loose, equitable practices quickly fall down a slippery slope.

The Three Categories of Good

In the status quo, American legislators are acting in a morally ambiguous manner. Evidently, while explaining the Ring of Gyges to Socrates, Glaucon says that there are three categories of good. The first category is wanted because we find it pleasurable. These are things that are enjoyed for the satisfaction they engender, without considering any of the consequences. For example, enjoying a piece of cake or attending a concert. The second type of good is desired for not only their own sake, but also their consequences. This categorization of goods is appreciated for their instantaneous satisfaction and the beneficial outcomes they result in. Examples include knowledge which can be used in practical instances, health which is valued for its feeling of well-being, and friendship for its

cherished moments and joy it provides. The third class of goods are valued only for their consequences. These are goods that are not enjoyable intrinsically but are still yearned for because of the benefits they reap. Examples include exercise which is an onerous experience but is done for physical benefits and medicine which is often unpalatable but is still taken for its health benefits.[271] Glaucon tells Socrates that justice falls within the third category of goods. Reasoning with Socrates, Glaucon says that people only conduct themselves morally because they fear the external consequences of not doing so. Essentially, it's about the *appearance* of virtuousness not the real state of *being* virtuous that people care for.[270]

Congressional Hypocrisy in Action

Congress members are identical in nature. They derive political value by appearing to be moral rather than truly acting moral when no one is watching. Lawmakers portray themselves this way by appealing to their constituents as a "public servants" and condemning those who do not represent the interests of the common good. Understanding this ideology with insider trading means comprehending the inherent hypocrisy within lawmakers. All of them wish to be seen as ethical by the media, with few really acting in ethical accordance. What's more, members of Congress preach about the corruption of corporate America when insider trading scandals come out, while they themselves employ similar methods when trading stocks.

The Psychology of Moral Hypocrisy

Interestingly enough, this conclusion about morality is supported by scientific research. Daniel Batson, a psychologist at the University of Kansas, approached the question of the causes of integrity and moral hypocrisy from a psychological and empirical standpoint. Parallel to Glaucon, the key question Batson investigates is whether people aim to be moral or merely appear to be so. In his study, participants are presented with a simplistic yet revealing scenario. Test subjects are instructed to allocate two distinct tasks – one enjoyable and rewarding, providing a chance to win the lottery, and the other tedious and unrewarding. In short, participants had the ability to assign these tasks to themselves and to an oblivious second individual. For measurement purposes, the dependent variable was the percentage of times participants assigned themselves to the rewarding task.

Given that the results supported Glaucon's belief, it is important to dissect the degree of truth in Glaucon's hypothesis. When given free rein to make their decision, a jaw-dropping 80% of participants chose the positive task for themselves. But this wasn't enough for Batson, as he wanted to understand their thought process. To objectively gather this data, he created a self-assessed morality scale of one to nine, with one being the least moral and nine the most. After the participants scored themselves on morality, the average group deemed their actions moderately moral, with most falling at a score of four.

Then, Batson shifted the method of assigning positive or negative tasks by introducing an optional coin flip. Even when participants were given the chance to flip a coin that would control

the allocation of tasks, 90% of participants still chose self-serving tasks for themselves. Oddly, along with their continued immorality, the participants' average self-assessed morality ratings jumped up to seven, indicating a noticeable pattern of self-justification. Batson used his ingenuity to further demonstrate the inherent selfishness consuming unchecked individuals. This time, participants had to use the coin to dictate their tasks. And to make the task easy enough for a simpleton, he labeled both sides of the coin with specific instructions for who to assign the task to. Even then, participants manipulated the process by disregarding unfavorable flips in favor of repeated attempts until their ideal outcome emerged. So, while the veneer of fairness was maintained, underlying selfishness was still present. By far, the most profoundly revealing test was when participants were introduced to one final object: a mirror. Since individuals could now see their own reflection while choosing, their behavior changed remarkably. Most participants adhered to the coin's 50-50 chance of allocation that they had initially pretended to honor.[269]

Batson's Mirror and Congressional Accountability

Batson's study provides a striking lens through which to view the behavior of lawmakers involved in insider trading. Just like participants in his experiment used deceptive rationalization to justify their greedy actions, Congress members may also try to reason with themselves over the exploitative use of privileged information because it is technically legal. The absence of direct observation or immediate ramifications allows them to cloak their immoral behaviors in a facade of legality and public service. Batson's findings show the importance

of transparency and oversight. In a political environment where lawmakers' actions are observed and scrutinized, they are more likely to adhere to ethical standards. In the case of Congress members, this means swiftly implementing robust mechanisms for timely financial disclosure, ensuring that their actions withstand the public and legal system's scrutiny.

The Rajaratnam Case: Justice for Some

It's no secret that many members of Congress engage in stock trades based upon insider information. However, in order to further the illusion of being just themselves, they impose harsh regulations and laws on top traders and institutional investors in an attempt to draw attention away from their abuses of power and show that everyone, including the elite, must follow the law. Unfortunately for billionaire Raj Rajaratnam, he would be one of the corporate big shots politicians made an example out of.

In 1997, Rajaratnam founded the Galleon Group, a hedge fund that would eventually become a household name on Wall Street and throughout the financial world. Not long after its founding, he had acquired a reputation for making brilliant trades in cutting edge technology. Before he knew it, Galleon would be managing upwards of $7 billion by the 2000s. Nonetheless, 2009 would be a celebratory and perilous year for Rajaratnam. That year, he would surpass a net worth of $1 billion, officially making him a billionaire. On the other hand, the newest Wall Street titan would be probed by the FBI for insider trading.

After wiretapping Rajaratnam's conversations, investigators found incriminating evidence. For instance, the manager was caught telling an employee "I heard yesterday from someone who's on the board of Goldman Sachs that they are going to lose $2 per share… So what he was telling me was that, uh, Goldman, the quarter's pretty bad. A separate verbal exchange showed the tipster revealing to Rajaratnam, "So I think, uh, you can now just buy," in reference to the upcoming stock deal.[16] Things weren't looking good for him and two years later, the tycoon was found guilty of fourteen counts of insider trading charges in companies like Goldman Sachs, Clearwire, Akamai, AMD, Intel, Polycom, and PeopleSupport from which he made tens of millions.

Manhattan U.S. Attorney Preet Bharara commented on the matter saying, "The message today is clear – there are rules and there are laws, and they apply to everyone, no matter who you are or how much money you have. Unlawful insider trading should be offensive to everyone who believes in, and relies on, the market. It cheats the ordinary investor, victimizes the companies whose information is stolen, and is an affront not only to the fairness of the market, but the rule of law. In just over 18 months, this office has charged 47 individuals with insider trading crimes; Rajaratnam is the 35th person to be convicted. We will continue to pursue and prosecute those who believe they are both above the law and too smart to get caught."[272]

U.S. Attorney Bharara firmly stated that nobody is above the law, yet one group of Americans is exempt from insider trading laws – members of Congress. This political hypocrisy is seemingly loathsome because if lawmakers made trades in the same manner as Rajaratnam,

they would likely be investigated but face no consequences. Rajaratnam, on the contrary, faced the harshest punishment ever imposed on an insider trader: 11 years in prison and a $10 million fine.[273] What this shows is an unequal application of insider trading laws. Because Rajaratnam was a private individual, the flawed American legal system wreaked havoc on his career. But members of Congress have legally been able to trade on non-public information they obtained through their official duties to the public. Without a doubt, this situation exemplifies political hypocrisy, where lawmakers may publicly denounce unethical behavior or financial crimes while profiting from loopholes that protect their own actions.

Machiavelli's Political Philosophy

When it comes to political theory, Niccolò Machiavelli was a Florentine diplomat, author, military general, and political theorist from the sixteenth century who revolutionized thinking about morality. When the Medici family regained power, Machiavelli was brutally tormented and exiled from the state. There, he wrote one of the most famous political treatises known to man: *The Prince*. In his writings Machiavelli does not pay any attention to how to rule justly. Instead, he is most concerned with attaining and preserving one precious commodity – power. Essentially, he argues that it is nearly impossible for a politician to be morally just and at the same time a viable politician. Machiavelli's claim was that a good politician's duty was to protect and maintain the state, by whatever means necessary.[274]

In defining virtue, Machiavelli proclaims that virtuousness is the traits praised by external observers. He believes that a prince should always appear virtuous, but governing a state in a constant mindset of virtuousness can be a politically fatal blunder. Remember, Machiavelli was not concerned with the moral virtuousness of the action itself, rather the subsequent events that followed for the ruler.[275]

Nevertheless, *The Prince* is notorious for its advice to current and future rulers, even if that path to power is brutal and unscrupulous – hence its distinction as a "manual for tyranny". Since Machiavelli had little to no concern over morality, he shamelessly endorsed many manipulative and heinous acts for the sake of control. In terms of political hypocrisy, he argued that some amount of hypocrisy was necessary for a functioning political life.[276] Machiavelli's claim that hypocrisy is an inescapable aspect of politics should be viewed with deep concern for the best interests of democracy. As a matter of fact, he preaches that a politician can be hypocritical as long as it serves the state or the common citizenry better than if the elected official was moral. After all, even if politicians cannot meet their political promises virtuously, Machiavelli states that no other justification is required to achieve the broader goals of the state.[17] In his effort to defend political hypocrisy, he argues in favor of sinister tactics to further the prince's interests at all costs. Even then, Machiavelli offers the reasoning that some immoral and hypocritical political actions are to be judiciously used if moral ones would make the state worse off.[277] Namely, if a ruler were to order the

assassination of a figure whose absence prevents war, then this act would be justified by *The Prince*.

In Machiavellian terms, moral compromise is only justified if it strengthens the state, but insider trading does the opposite. So long as lawmakers are given free rein to trade stocks on nonpublic information, a corrupt political culture alienates the public and weakens the democratic tenets that hold the nation together. What's worse is the public cynicism it creates toward political engagement along with the market instability for the majority of investors. Clearly, the hypocrisy of congressional insider traders does not fall into Machiavelli's standard, therefore opening the door to grave consequences if left unattended.

The Authoritarian Warning

Though it may seem excessively paranoid to assert that allowing members of Congress to line their pockets is precarious, an authoritarian future is never anticipated by those being governed. If every time an aspiring dictator rose to the political stage and constituents identified them, totalitarian actors like Stalin and Hitler would have never ascended to power. Ominously, Machiavelli advises rulers to be hypocritical and act immorally behind closed doors to fulfill their own desires. Aside from hypocrisy, he directs a prince towards all the required atrocities for taking or controlling power – and to commit them simultaneously for optimal effect. Examples of the ruthless but effective strategies Machiavelli proposed were invading neighboring territories, oppressing religious minorities, and

abandoning all moral principles once political power was at stake.[277] When those being governed do not recognize their elected officials are manipulating them, a democratic government will quickly backslide into something far more repressive. In order to circumvent this, we should hold all elected officials to the same laws that Americans have to abide by for every waking moment of their lives. Setting guardrails for congressional traders will limit the scope of their power over the economy and their constituents. Shortly before his death, Machiavelli wrote a letter to his friend, Francesco Guicciardini, containing a wise message: "I believe that the true way of getting to Paradise is to learn the way to Hell in order to avoid it.[278]"

Two Moral Frameworks

Examining the morality of congressional insider trading can be evaluated by two moral frameworks, the first of such being consequentialism. Say you were to adopt Machiavelli's philosophy; hedonistic consequentialism would be your only concern. But it is important to note that consequentialism has a broader, more utilitarian-like focus. In short, the term consequentialism is a moral theory stating that an act is morally virtuous so long as the consequences are most beneficial, regardless of to whom.[279] A commonly cited ethical dilemma that philosophers use to justify consequentialism as a moral framework is the famous trolley problem. Picture this: You are the conductor of a train barreling down the railway, when you notice something. In the distance, are five people tied to the tracks with no way out. Fortunately for them, there is a fork in the track before you collide with them. The only caveat is…

one person is bound to the alternative track. Would you turn the train to save four lives, or keep it on track to avoid committing murder?[280] A consequentialist would argue that shifting the train to the other railroad would be morally right because it entails more ideal subsequent outcomes. Despite technically having committed murder, the conductor supposedly acted in a clearly righteous way. This class of ethical dilemmas are referred to as "The Problem of Dirty Hands" in politics. Machiavelli as well as other authors like Anthony Trollope claim that intrinsically immoral acts are justified as long as they yield beneficial circumstances.

In Anthony Trollope's novel, *The Way We Live Now*, a central character named Lady Carbury proposes that noble actions can be unconventionally categorized as moral. When remarking on the novel's main character, Melmotte, to her friend Mr. Booker she says:

> "If a thing can be made great and beneficent, a boon to humanity, simply by creating a belief in it, does not a man become a benefactor to his race by creating that belief?"
>
> "At the expense of veracity?" suggested Mr. Booker.
>
> "At the expense of anything?" rejoined Lady Carbury with energy. "One cannot measure such men by the ordinary rule."
>
> "You would do evil to produce good?" asked Mr. Booker.
>
> "I do not call it doing evil…. You tell me this man may perhaps ruin hundreds, but then again he may create a new world in which millions will be rich and happy."
>
> "You are an excellent casuist, Lady Carbury."
>
> "I am an enthusiastic lover of beneficent audacity," said Lady Carbury…[18]

Similarly to Lady Carbury, politicians are only permitted to make immoral decisions if they reap positive outcomes for the masses. From the moral framework of consequentialism, lawmakers trading stocks is immoral because its intrinsic wrongness cannot be justified by the outcomes it produces. These harmful consequences are economically inefficient because they hinder the equity of financial markets. When the majority of retail investors become discouraged from making investments because of an unfair disadvantage, the overall market will suffer reduced efficiency. In addition, it undermines democratic institutions by creating a perception of corruption within Congress. Not to mention, the widening of economic gaps between members of Congress making millions by acting upon privileged information and ordinary Americans just trying to retire. So, by no means whatsoever does insider trading save the "four individuals" or in this case aid the majority of citizens' lives.

Deontological Ethics

Switching perspectives, we can view the act of trading stocks as a Congress member from another moral framework: deontology. If consequentialism was the sun, deontology would be the moon. The two moral frameworks are polar opposites; hence, the contrarian view deontologists hold on what morality truly means. Regarded as the pioneer of deontological moral theories is the eighteenth-century German philosopher Immanuel Kant. Kant ignored the consequences of an act and diverted his attention to the morality of the act in and of itself. He believes that humans are intelligent creatures and can

rationalize with themselves over the moral laws that apply to their act. This central framework of morality is known as Kantian deontology.[281]

Revisiting the trolley problem, a Kantian would under no circumstances commit the inherently immoral act of murder, even if not doing so results in four more fatalities. To the average person, deontological values are less practical and empirically virtuous than consequentialism, but many philosophers have made a case for Kantian ideals. Consider a world where you are a highly skilled surgeon. Today is a grave day for you, since five of your patients are in critical condition due to organ failure. If the five patients don't receive transplants today, they'll expire. But all hope is not lost. By some miracle, a patient you rarely see showed up for his annual examination and it turns out he has immaculate organs that are compatible with all the dying patients. You are presented with an unimaginably difficult decision. Should you kill the healthy patient in order to save the other five?[281] In this particular case, a deontological approach is generally viewed as more virtuous because of the disturbingly inhumane act of murdering and dissecting a human for body parts. It seems both moral frameworks have an important function in moral calculus.

Applying Deontology to Congressional Trading

In interpreting the virtuousness of congressional insider trading through a deontological lens, the act does not satisfy the moral principles that deontology requires for several reasons. First and

foremost, engaging in stock trading based on privileged information is a blatant violation of a Congress member's duty to their constituents. Using this information in an abusive way that was trusted to them by the American people is appalling. Secondly, Kant states that an act can only be moral if universally considered moral but that is not the case.[282] Hypothetically, if everyone in the United States were to partake in insider trading, financial markets would grind to a halt and be in a state of chaos. Thirdly, the lack of respect for others' interests when electing lawmakers is also considered a violation of the deontological principle of respect for persons. Finally, the rule of law being subverted is unfair and creates a lack of justice for opportunistic members of Congress.

Conclusion: Both Frameworks Demand Reform

All in all, closely analyzing both moral frameworks demonstrates that restricting or banning Congress members from trading stocks satisfies consequentialist and deontological ideals, optimizing ethical representation. Looking at consequentialism, the restriction of congressional stock trading results in more positive outcomes such as reducing the risk of conflicts of interest in policymaking and fairer financial markets. Likewise, a reformatory bill would meet consequentialists' wishes to minimize harm by preventing market manipulation, loss of public trust, and economic inequality. As for deontology, ensuring that representatives uphold and prioritize their duty to their voters will be achieved by banning insider stock trading in Congress. From a more general ethical view, restrictions force members of Congress to abstain from exploiting voter-trusted

information for financial gain, thereby upholding the rule of law. Once these moral frameworks and principles are represented in an insider trading reformatory bill, the concentration of wealth and power will be diluted. By championing this wave of reform, the U.S. safeguards herself from a tyrannical regime with a grim reality in many corners of the world where anything the rich and powerful desire comes to pass.

CHAPTER

8

LEGISLATING INTEGRITY

Good laws lead to the making
of better ones;
bad ones bring about worse.

– Jean-Jacques Rousseau, 1712-1778[283]

Comprehending the current state of affairs might cause any concerned American to wonder if there's a path forward. Luckily, lawmakers hailing from all political parties are uniting to pass landmark legislation to prohibit Congress members from making conflict-of-interest trades – to such an extent that it has media outlets dumbfounded at a rare sight of bipartisanship. It is important to recognize, however, that in order for their legislation to advance, public pressure is needed from their constituencies. For this reason, this chapter will showcase every proposed reformatory bill, as well as identify the ones that are most promising. And of course, the strategies watchdog groups and advocates can use to propel this legislation to the Oval Office as fast as possible.

Ever since the opening of this book, the urgency and importance of reforming congressional trading laws has been maintained. Financial disclosures of Congress members have shown a stagnancy in ethical accountability efforts. According to reports filed on behalf of lawmakers in 2021, a stomach-churning 53% – or 284 members own stocks.[284] It's been made apparent that past efforts at reform like the STOCK Act have failed, since almost a decade later 78 members of Congress are blatantly violating its disclosure requirements.[7] Moreover, legislators are attempting to create a mask of reform by pretending to have third-party actors make investments on their behalf. QBTs have repeatedly been leveraged as a way out from corruption accusations but only 2% of Congress members have QBTs. From the grand total of ten lawmakers with QBTs, all of them own stocks or widely held investment funds elsewhere.[285]

Bipartisan Momentum Building

Before calling upon fellow Americans to protest the inherent corruption of allowing legislators to trade stocks on privileged information, activists must inform themselves on what legislation has been introduced to Congress in the first place and by whom. In a rare show of cooperation between unlikely allies, Representative Alexandria Ocasio-Cortez (D-NY), Representative Matt Gaetz (R-FL), and moderate standing Representative Raja Krishnamoorthi (D-IL), all patriotically stood on a united front against congressional stock trading in May 2023.[285] But it's not just them, Congressman Cory Mills (R-FL) remarked, "Congress needs to bring stock trade bans to the floor for a vote. Let's see who's really here to serve the people, or serve themselves.[286]" What's more, Brian Deese, the National Economic Council Director to President Biden, also expressed the administration's support for bills preventing lawmakers from trading stocks. "One of the things that we need to do across the board is restore faith in our institutions, whether that be Congress and the legislative branch, whether that be the Fed and otherwise and so anything we can do to try to restore that faith, I think makes a lot of sense," Deese added on the president's behalf.[287]

The ETHICS Act: Comprehensive Reform

Recently, a flurry of bills have arisen due to an increasing number of lawmakers wanting to change Congress' attitude towards corruption. As of August 2024, the newest of these bills to be introduced is the Ending Trading and Holdings In Congressional Stocks (ETHICS) Act

in April. Introduced by Senators Jeff Merkley (D-OR) and Sherrod Brown (D-OH), with a staggering twenty other senators backing their mission.[288] To clarify restrictions, the ETHICS Act explicitly bars members of Congress and their dependent family members from owning or trading securities, commodities, or futures. Additionally, the Act prohibits stock trading for lawmakers upon its enactment, with a 90-day divestiture grace period in order for members to sell their current investments if they wish.

Lawmakers have three methods of releasing control of their personal assets. First, they can divest from covered assets. Second, diversify their holdings into permitted assets like mutual funds or exchange traded funds. Third, place the assets entirely in a QBT with a divestiture mandate to ensure its continued blindness. For the QBT option, trustees have to sell their original covered assets for the lawmaker 120 days after the establishment of the QBT. To expand disclosure requirements, the ETHICS Act mandates all federal benefits be reported by legislators, such as loans, agreements, contracts, grants, and payments.

As for penalties, the bills are anything but lax. If Congress members continue to hold or trade their covered assets, an amount equal to the monthly equivalent of the annual rate of pay or 10% is deducted from the value of each violated asset. On top of that, violating communication rules for QBTs result in up to $10,000 fines per violation or 1% of the QBT's value lost when the violation occurred.[289]

Strengths and Weaknesses of the ETHICS Act

While the ETHICS Act introduces many strong measures to curb congressional stock trading, it's imperative to understand its pros and cons. First of all, the clear prohibition of trading or owning stocks for members of Congress will surely reduce potential conflicts of interest and the murkiness surrounding insider trading regulations. The immediate action requirement for divesting ensures swift action to limit the possibility of insider trading engagements as well. This would certainly replenish the public's trust, as Merkley cited a recent poll from the University of Maryland showing that 85% of Americans supported the ban.[290] In addition, the QBTs requirement for lawmakers enforces that divestiture places thick barriers between insider influence over investment choices. Moreover, the unforgiving penalties for communication and divestment violations will deter members of Congress significantly.

However, the drawbacks of the ETHICS Act are threefold. A provision within the Act allows for minor dependents to hold and trade assets worth up to $10,000. This still creates exceptions to the rule that can benefit lawmakers and potentially be exploited as a loophole to bypass broader congressional restrictions. Furthermore, managing the QBT trustees will prove to be difficult because of the heavy dependence on their integrity. The only method of alleviating this is by implementing widespread and thorough monitoring systems to ensure proper management, an impossible feat. The last disadvantage is legislators potentially exploiting the 90-day grace period and the 120-day period for trustees.[290] This lenient timeframe will open pathways for Congress members and trustees to

substantially profit off privileged information before completely divesting.

Overall, despite the ETHICS Act proposing regulations on insider trading by lawmakers, its feasibility will be dependent on stringent enforcement policies and eliminating any loopholes. Due to the newness of the Act, the bill has been introduced and examined by the Committee on Homeland Security and Governmental Affairs on July 24, 2024. Currently, the trailblazing ETHICS Act is awaiting further legislative action.[291]

The Bipartisan Ban on Congressional Stock Ownership Act

Another bill introduced to regulate Congress members' abilities to trade stocks is the Bipartisan Ban on Congressional Stock Ownership Act of 2023 by Congresswoman Pramila Jayapal (D-WA). To introduce the Act, the congresswoman forged an unexpected alliance with two noteworthy Republicans: Representatives Matt Rosendale (R-MT) and Ken Buck (R-CO).[292] Their alliance was such a rare sight in American politics that Rosendale himself said, "Anytime that you see Jayapal… standing there on a piece of legislation with me and Ken Buck, that tells you what kind of cross-party support there is."[2] Together, they have garnered the support of twenty-seven other cosponsors.

At its core, the primary goal of the bill is to raise the bar for ethical standards in Congress by eliminating the potential for any conflict-of-interest financial dealings. Fundamentally, the Bipartisan Ban on Congressional Stock Ownership Act of 2023 clearly aims at

banning members of Congress and their spouses from owning stocks, bonds, commodities, futures, or similar financial instruments. This provision intends to mitigate any risk of lawmakers making decisions based on how it would affect their portfolios. However, exemptions to prohibited holdings are broadly diversified funds like mutual funds and government employee retirement plans.

Also, the Act contains mechanisms for members of Congress' divestiture. For current members, they are required to sell their prohibited securities within 180 days after the bill's enactment. Likewise, new members must divest 180 days from the start of their tenures. To account for complex investment vehicles, lawmakers and their spouses are given 5 years at the maximum to divest from these investment products. In terms of taxation provisions, the bill eases the financial burden of divesting by deferring any capital gains taxes from the sale of prohibited securities if those proceeds are reinvested into permitted bonds or diversified funds in a timespan of 60 days. Finally, penalties imposed on a lawmaker or their spouses in violation of the Act are fines up to $50,000 per violation.[293]

Analysis of the Bipartisan Ban

As with all pieces of legislation, careful interpretation is required before endorsing it. Along with many other ethics reform bills, the Bipartisan Ban on Congressional Stock Ownership Act of 2023 is beneficial because it clarifies the ethical standards for members of Congress and their spouses through its prohibition of certain financial assets. Additionally, the standards ensure uniform applicability to all

legislators, fostering a legislative chamber with consistent ethical standards and no perceptual favoritism. Also, a straightforward ban makes effective oversight easier to implement compared to a disclosure-based accountability system. The last benefit lies in its hefty fine of $50,000 for each violation, acting to discourage unethical behaviors.

Be that as it may, the Bipartisan Ban on Congressional Stock Ownership Act of 2023 has some flaws with its divestment mechanisms. Most notably, the requirement for divestiture in five years of complex investment vehicles.[294] This could be especially difficult for lawmakers, particularly if those assets are illiquid or complicated to value. As a result of the bill's enactment, Congress members may inadvertently lose money or suffer from unintended taxes. Moreover, the Act's ban might complicate retirement planning for lawmakers whose portfolios rely on some prohibited securities, potentially necessitating a complete reworking of their financial planning. Thus, gaining congressional support for this bill will be incredibly challenging due to the major inconveniences hindering lawmakers after the fact. This struggle has been made apparent from its latest committee action being on March 21, 2023. The bill so far has failed to pass through the House and advance for Senate review.[294] And although the Act attempts to cut off all loopholes, it still leaves room for more subtle loopholes regarding exempt diversified investment funds.[295]

It must be remembered the scale of influence national lawmakers have, and these exemptions might still allow for indirect influence or conflicts, depending on the fund's management and by

whom. What's equally important is a broader political dilemma – the deterrence of qualified congressional candidates. The bill's demanding financial restrictions could discourage highly qualified candidates from running for office, just because they have complex investment portfolios. These prospective policymakers will never walk the floors of Congress, leading to poor legislative decisions from less qualified or experienced individuals.

The Bipartisan Restoring Faith in Government Act

Remarkably, Representative Brian Fitzpatrick's (R-PA) introduction of the Bipartisan Restoring Faith in Government Act has garnered the support of AOC and Gaetz, two sworn political opponents, and Krishnamoorthi, a relatively moderate congressman. What's more, four other Congress members have vowed to cosponsor the bill more recently in 2024.[295] "We must move forward on issues that unite us, including our firm belief that trust in government must be restored, and that members of Congress, including their dependents, must be prohibited from trading in stocks while they are serving in Congress and have access to sensitive, insider information," Fitzpatrick explained. AOC, a staunch Democrat, very much agreed. "When members have access to classified information, we should not be trading in the stock market on it. It's really that simple," asserted the congresswoman.[296]

The bill stipulates that lawmakers, as well as their spouses and dependents are banned from buying or selling stocks that are not diversified investment funds, U.S. Treasury securities, or other third-

party safe holdings. Secondly, members of Congress are required to divest from banned holdings within 90 days of enactment. The two methods of relinquishing their control over these investments are through a QBT or by selling them off. Furthermore, the Act cuts communication linkages between trustees and congressional beneficiaries concerning their investment decisions. On top of that, compliance certificates are mandated to be signed by members of Congress to showcase their ethical policymaking to their constituents. If the Act's provisions were violated, significant civil penalties will be incurred. What's even worse for the lawmakers is that since their losses cannot be deducted from income taxes for prohibited investments, creating a massive financial disincentive for engaging in illegal dealings.[296]

Strengths of the Restoring Faith Act

The Bipartisan Restoring Faith in Government Act has seen its fair share of media coverage and could forge a path to ethical lawmaking in the future. The bill's stipulation of no individual stock trading effectively reduces the likelihood of members of Congress exploiting non-public information for personal profit, reassuring the public that legislative decisions are being made in their interests. In turn, the increased transparency gained from the bill bolsters public perception of their representatives and senators. The option for Congress members to place their prohibited investments in a QBT also eliminates any influence a lawmaker has over their investment portfolios and minimizes the chances of insider trading. Finally, another advantage the bill has is its stringent penalties for violations

and stripping unethical lawmakers of the ability to deduct their losses if they were engaging in sketchy trading to begin with.[297]

Although the Bipartisan Restoring Faith in Government Act appears to be pragmatic and effective if implemented, there is one challenge it may struggle with. Properly enforcing the bill's stringent communication guidelines between trustees and lawmakers of blind trusts will be painstakingly difficult to monitor. Because of this, there is a slight risk that loopholes, or subtle forms of influence could subvert the bill's goals, though it will not be as prevalent in alternative ethics bills which makes it a promising piece of legislation.

The STOCK Act 2.0

Though it's hard to believe, Senator Kirsten Gillibrand (D-NY), one of the original sponsors of the STOCK Act, is publicly acknowledging its shortcomings with a revamped piece of legislation – the STOCK Act 2.0! Along with her colleague, Representative Katie Porter (D-CA), the two sought to fill the void of missing regulations previously needed in the STOCK Act. "Americans should be able to trust that government officials make decisions in the best interests of the people – not their stock portfolios," Representative Porter remarked.[297]

If this newly updated version of the STOCK Act were to pass, many enhanced restrictions would be imposed. For starters, federal benefits reporting is compulsory for members of Congress, senior staffers, the President, Vice President, and senior executive branch employees. All individuals must also report whenever their spouses or

dependents apply for or receive federal benefits such as loans, grants, or even contracts. The permitted time period for reporting is 30-45 days, and a fine of $500 for failure to file their benefits. In addition to federal benefits disclosure, the revised act extends the STOCK Act's financial disclosure guidelines to the federal judiciary and Federal Reserve Bank officials. In an attempt to strengthen penalties, Senator Gillibrand and Representative Porter are increasing the STOCK Act's fine of $200 to $500. Furthermore, the STOCK Act 2.0 would explicitly bar high-level government officials, including members of Congress, the President, Vice President, Supreme Court Justices, and Federal Reserve leaders, from trading individual stocks. Violations of this restriction result in a civil penalty of at the bare minimum, 10% of the investment's value. Lastly, in order to ensure financial transparency is maintained, all Financial Disclosure Reports (FDRs) must be filed where the general public can access them in downloadable formats for government officials.[298]

Thankfully, the STOCK Act 2.0 compensates for its predecessor's mistakes by casting a wide net of financial regulations. This broader scope of restrictions is the major advantage provided by the Act where most other bills are lacking. If passed, the bill would definitely expand upon the STOCK Act's requirements by including federal judiciary and Federal Reserve officials to close possible loopholes. As a result, more elite officials are subject to the same rules and scrutiny as members of Congress and the President and Vice President of the United States. Moreover, by mandating faster, accessible, and public reporting of federal benefits and financial dealings, the public will feel as if there is more transparency from

their representatives and senators. And the most obvious strength of the STOCK Act 2.0 is banning members of Congress from trading on nonpublic information, which tells their constituents that their interests are being prioritized when drafting or voting on legislation.

On the other hand, the drawbacks of the STOCK Act 2.0 are twofold. First, the increase from $200 to $500 is not a severe deterrent as the 10% civil penalty for insider trading. When members of Congress make tens of thousands on trades, they are not going to be concerned about a $500 reporting fine, just as they were not concerned when the STOCK Act imposed a $200 fine.[298] The consequence of this would be that elected officials would postpone their financial disclosures to evade press coverage of their sketchy trades. The second disadvantage of the Act lies in its negative impact on political participation. With the ban on individual stock trading, many qualified candidates may be discouraged from public service roles or continuing their tenure, especially those with substantial life savings in the stock market. Another inadvertent effect of this would be that the officials may be directed towards investing in less transparent or regulated financial products. So far, the STOCK Act 2.0 has been read twice in the Senate and referred to the Committee on Homeland Security and Governmental Affairs.[299]

The PELOSI Act: Political Theater with Purpose

A separate bill introduced by Senator Josh Hawley (R-MO) takes a sharp political jab at Nancy Pelosi, while also serving the American people's interests. Formally known as the Preventing Elected Leaders

from Owning Securities and Investments Act, the bill's acronym has amusingly nicknamed itself the PELOSI Act.[300] While explaining his bill to Sean Hannity, Hawley commented, "When the voters send members of Congress to Washington, they expect them to do the people's business, not to be day trading on the stock market, not to be using the information they get from briefings to go and make a quick buck on Wall Street. So here's what my bill does: It says no more trading stocks by members of Congress, in fact no more ownership of stocks by members of Congress. If you want to save, fine! Put it in a mutual fund like most Americans do, but Nancy Pelosi is the perfect example of what should not be happening in D.C., which is people getting rich on the stock market off information they know because they're a member of Congress." He was referring to the numerous IPO and stock deals she and her husband have participated in the past, attempting to entice political attention to the bill.[119]

Essentially, the Act stipulates that members of Congress and their spouses are not permitted to hold, buy, or sell stocks during their political tenure. The only exception to this provision is that lawmakers can invest in diversified mutual funds, exchange-traded funds or ETFs, and U.S. Treasury bonds. Additionally, when taking office, legislators and their immediate dependents have up to six months to sell any prohibited investments or move them to a blind trust for the remainder of their term. The penalty for violating the requirements of the PELOSI Act are harsh. Any and all profits made from restricted investments are completely forfeited to the U.S. Treasury. What's more, any members caught violating the act will be

stripped of the right to deduct any financial losses from those investments on their income taxes. The PELOSI Act also grants permission to Congress' ethics committees to conduct further public investigations and charge fees accordingly. The last provision states that two years after the bill's enactment, the Government Accountability Office (GAO) can audit any lawmakers' accounts to confirm they are in compliance with the law, eliminating the chance for conflicts of interest.[301]

Former Speaker of the House Nancy Pelosi never directly addressed Hawley's PELOSI Act, but earlier in 2021 she opposed any stock trading regulations saying, "We're a free market economy." But once stock trading regulations started garnering support, Pelosi tasked her fellow lawmakers to solve the issue with bipartisanship – a paradoxical stance. The chief counsel for a watchdog organization Donald Sherman took to X to criticize Hawley over his choice of naming in the Act. "Way to undermine an important issue with political stupidity," Sherman wrote.[302]

Regardless of the political backlash, Hawley's bill introduces many game changing requirements. The prohibition of stock trading substantially lowers the risk of nonpublic information being used for personal gain by lawmakers. On top of that, the Act's independent GAO audit procedures prevent any abuse of power and protect the integrity of congressional lawmaking. Transparency and accountability of lawmakers is also heightened by stipulating that all lawmakers divest or place their assets in a blind trust, and by publicizing the violations of any legislator who fails to act accordingly. At the same time, there is always going to be a level of complexity surrounding the

enforcement of the PELOSI Act. This is due to the reliance on the congressional ethics committees in publicly reporting violations without any political motive. Plus, it shifts the mindset of members of Congress to focus on long term financial policies for the country with mutual funds, ETFs, and U.S. Treasury bonds, instead of feeding into their short-term stock gains.

Unfortunately, the PELOSI Act does have some shortcomings. One of the limitations of this bill is that it doesn't explicitly restrict close family members or associates from trading on insider information. There is a potential that under this bill, unethical behavior will just shift to relatives or confidants. Additionally, blind trusts are challenging because there is still a chance that members of Congress will influence the trustee in more subtle ways to be indirectly aware of what investments to make, basically diluting the intended effect of the law. Another limitation is the bill's failure to address complex financial instruments, indirect investments, or undisclosed dealings.[303] Closing these loopholes would be critical in ensuring the PELOSI Act's effectiveness. Finding congressional support for this bill would also be tough, since Democrats would likely refrain from cosponsoring a bill that directly critiques the most prominent Democrat in the House. Currently, the PELOSI Act has been read twice and sent to the Committee on Finance.[301]

The TRUST in Congress Act: Building Momentum

Notably, the Transparent Representation Upholding Service and Trust in Congress Act or TRUST in Congress Act has greatly moved

the congressional community in favor of completely restricting stock trading. Introduced by Representative Abigail Spanberger (D-VA) along with Representative Chip Roy (R-TX), they have accumulated an astounding seventy-seven total cosponsors, making the TRUST in Congress Act highly likely to gain mobility as a bill.[304] Speaking on behalf of the Act's cosponsors, Spanberger said, "After weeks of dysfunction, our constituents are eager to see their elected officials working for them. Bringing forward legislation to ban Members of Congress from trading individual stocks will demonstrate this commitment – and the American people will thank you.[20]"

More specifically, the bill stipulates that Congress members, their spouses, and their dependent children place all prohibited investments into a QBT. This reflects the value of transparency to the people because all control of potentially problematic assets must be relinquished to avoid conflicts of interest. The timeframe of this requirement is for the entire duration of the lawmaker's tenure in Congress. What's more, to really ensure that members of Congress do not capitalize on any information, the bill restricts legislators from withdrawing their assets from a trust 180 days after leaving political office. Certain investments mentioned by the bill are stocks, bonds, and other financial assets that could create an avenue for a Congress member to act upon classified information.[305]

As one of the most commonly featured bills regarding ethical legislation right now by mainstream media, the TRUST in Congress Act creates numerous advantages. Its most apparent is the prevention of conflicts of interest by legislators. Requiring Congress members to place their investments in a blind trust will place a strong lockbox

over their personal assets. Then, as the name suggests, the bill would restore public confidence in the integrity of lawmakers in Congress.[305] Not only does the TRUST in Congress Act level the playing field for all investors, but it also creates better long-term policy making like other bills. Because of this, short-term financial gains are less prioritized over long-term financial incentives.

The only noticeable drawback from the TRUST in Congress Act is its potential deterrence to prospective congressional candidates if financial restrictions seem too onerous. Some may argue this is actually a benefit, since it will filter out avaricious candidates and appeal to public servants. In October of 2023, Congresswoman Spanberger requested that incumbent then-Speaker of the House Mike Johnson take action on this issue. Spanberger has been championing a bill for congressional finance reforms, but former Speaker of the House Kevin McCarthy never got around to it. "Prior to assuming the role of Speaker of the House, U.S. Representative Kevin McCarthy promised to hold a vote on legislation to ban Member stock trading… Unfortunately, there was no significant movement on this issue in nine months of Speaker Emeritus McCarthy's tenure," she said.[20] Perhaps Representative Abigail Spanberger and her sponsors will be in the most optimal position to revive the push for insider trading legislation. So far, the TRUST in Congress Act has been introduced to the House and referred to the House Committee on House Administration.[305]

The Ban Congressional Stock Trading Act: Senate Success

Not mentioning the Ban Congressional Stock Trading Act would be absurd. Reintroduced by Senators Jon Ossoff (D-GA) and Mark Kelly (D-AZ), the bill is proposing steep regulations for members of Congress.[19] Ossoff, a former investigative reporter whose company was in the investigative journalism business, placed his portfolios in a blind trust in 2021. Kelly also placed his holdings into a blind trust, making the duo two of only ten active lawmakers in Congress to do so.[306] Senator Ossoff then commented, "Stock trading by members of Congress massively erodes public confidence in Congress with serious appearance of impropriety, which is why we should ban stock trading by members of Congress altogether." Additionally, Senator Kelly said, "Elected officials don't just make policy; they also have access to valuable information that shapes different industries and the entire economy. Members of Congress should be focused on representing their constituents, not their stock portfolios."[19]

If passed, the Ban Congressional Stock Trading Act would impose investment restrictions on Congress members, their spouses, and dependent children under the age of 19. As part of these restrictions, they would be forced to sell off or place specified investments in a blind trust. This measure is designed to prevent any conflicts of interest during their congressional tenure – and even after. This is because the Act establishes investment regulations for the entirety of an individual's time in Congress, but also 180 days after their service in public office has concluded. Civil penalties incurred for those who violate the law are fines enforced 30 days after a Congress member has been notified of the violation, plus additional fines every 30 days if the violation continues.[307]

Clearly, the Ban Congressional Stock Trading Act aims to eliminate any opportunities members of Congress have to use their positions of public service for financial gain. Its primary advantage lies in its ability to require lawmakers to divest from problematic investments or place them in a blind trust. This in turn, increases the public's trust since it shows the high ethical standard legislators are held to, just as Ossoff and Kelly intended. Essentially, once passed, the bill would limit the public perception of corruption or self-dealing. Furthermore, the strict 180-day period afterwards creates heightened levels of accountability for Congress members.[308] The strict penalties also serve as a strong deterrent for non-compliance of the policy like the STOCK Act, likely discouraging flagrant acts of unethical lawmaking.

Be that as it may, the only issue with the Ban Congressional Stock Trading Act lies in its implementation challenges. When enforcing the fines for violations, the effectiveness of these penalties is contingent on their consistent enforcement. Successfully proving the violations and effectively monitoring them will prove to be difficult. However, if executed properly, the Act has a lot of merit. One particular reason why this bill has successfully appealed to members of Congress, it passed through Senate Committee in July of 2024. Elated by his bill's momentum, Ossoff spoke to his colleagues saying, "This is long overdue and necessary, and today we made historic progress passing my bipartisan bill out of Committee.[308]" Out of all the bills aiming to curb congressional stock trading, this one has by far gained the most political traction – at least in the Senate.

Author's Note on Neutrality

The author has very deliberately provided analysis about important and distinctive aspects of the introduced bills a restricted number of times to inform the public. The author wishes to assure readers that the explanations of these bills are presented without any political bias, and maintains a neutral and objective stance throughout the chapter. This is because the function of this book is to present different options as well as the pros and cons of choosing those options to the general public, not direct them to the best possible option since that would be unrepresentative of what their constituencies may truly believe. Readers and advocates should be aware that the bills in the 118th Congress can be reintroduced in the next congressional session and will likely be altered so they are advised to do their own independent research before advocating for a specific piece of legislation.

CHAPTER

9

THE FINAL PUSH

The only sure bulwark of continuing liberty
is a government strong enough
to protect the interests of the people,
and a people strong enough
and well enough informed to maintain
its sovereign control over its government.

– Franklin D. Roosevelt, 1882-1945[309]

All things considered; you may be wondering what the path to reform is. Well, the core purpose of *Unchecked Advantage* was to convince you and my fellow citizens to collectively advocate for higher accountability standards, ensuring that the folks on Capitol Hill are held to greater scrutiny. The culmination of this book's entire argument is analogous to the tactics of a master strategist whose writings will be used in advising the public on the best course of action.

The Master Strategist's Example

This analogy is set in the early Tokugawa period in southern Japan. There, Miyamoto Musashi was born to a family of elite samurai retainers in 1584. Sadly, his mother died when he was too young to remember, and his father fled from him right after the fact. As a result, the traumatized child was raised by his relatives.[310] From a young age, Musashi gained the reputation of being a prodigy swordsman, winning his first duel at 13. That victory would become the first of many, as Musashi went on to pioneer flawless sword techniques. Notably, he created the *nitō ichi-ryū*, a unique method where two swords are used to fence. And Musashi's distinctive style of combat seemed to be effective, since he was "the invincible samurai." He sported an undefeated record of over 60 wins, with most of the sword fights being fought to the death.[311]

Equipped with the tactical knowledge from his lifetime of duels, Musashi wrote his best advice for swordsmen while on his death bed. The five scrolls he wrote were titled *Gorin no sho*, or *The*

Book of Five Rings. Inside were five main chapters, all with Musashi's secrets to becoming a successful swordsman through the "way of strategy." Historians have interpreted his works beyond the realm of martial arts and swordsmanship. Inadvertently, when detailing his thought process and esoteric methodologies during a duel, Musashi revealed his peculiar brilliance regarding strategy.[312]

Building the Strategic Foundation

In his book, Musashi outlined the essential procedures to defeat your opponent in a swordfight. In this context, the opponents are avaricious members of Congress. To commence his educational literature, the legendary samurai argues that strategy is the fabric of any triumphant warrior. According to Musashi, there have never been any warriors in the world who really utilize the "way of strategy." But those who do will experience success when dealing with adversaries.[313] "The comparison with carpentry is through the connection with houses. The carpenter uses a master plan of the building, and the way of strategy is similar in this manner of planning," he wrote.[314] By using the metaphor of a carpenter, Musashi highlights the importance of careful planning and deliberate execution in strategy. In the same way, a hastily executed political campaign is bound to fail. Hence, the importance of understanding the techniques used by Musashi in each of his books.

The first book is entitled *The Ground Book*, and it was the chapter that created the conceptual buttresses for the other four segments. According to Musashi, the foundation of effective

combative technique starts with properly understanding the fundamental samurai principles. Even though the famed swordsman ran his own academy for aspiring samurai, he still advised each of his pupils to take the initiative to educate themselves on the basics. Musashi uses this analogy of a needle and a thread: The teacher stands for the needle with an opening, but only the student (the thread), can direct themselves to finding the path through the needle by skillfully applying the instructor's wisdom.[315] What Musashi is trying to convey is the necessity to familiarize oneself with the specifics of your goal. For advocates, this means teaching themselves, a task which you are currently completing, especially if you have reached this far into my book. Additionally, it means educating the public to lobby for legislative changes, particularly by organizing events and protests. All advocates for congressional accountability should be on the same page when it comes to their core values and beliefs. This is a necessary prerequisite before they can ever deliberate over what policies to advocate for. Effective activism for ethical reform can only be delivered when all advocates maintain a proficient foundation of knowledge regarding the issue.

Adapting Your Tactical Approach

Secondly, *The Water Book* discusses the various tactics that should be implemented by samurai depending on the scenario. Musashi stresses the importance of formlessness when he writes, "Generally, I dislike fixedness in both long swords and hands. Fixedness means a dead hand. Pliability is a living hand. You must bear this in mind.[314]" He continued by saying that developing this keen sense of rhythm to a

variety of contexts will enable a samurai to adapt their strategy accordingly.[316] Like a samurai assessing the battlefield, activists must constantly inform themselves about the rapidly shifting political landscape, stakeholders involved, and the public's current sentiment. Additionally, activists should be tactically flexible in their approach to activism. For example, if direct lobbying is not yielding noticeable results, they should pivot to grassroots mobilization, public awareness campaigns, or forging interorganizational alliances. On top of that, targeted actions for bills that gain more traction than others will result in the highest likelihood for success. The sole fact of the matter is that flexibility is a must for any political campaign.

Overwhelming the Opposition

Next was *The Fire Book*, which encapsulated all the reasons why a warrior should initially be aggressive in combat. Musashi explains this by instructing samurai to flank their opponent rapidly and relentlessly to throw them off balance. "Always chase the enemy into bad footholds, obstacles at the side, and so on, using the virtues of the place to establish predominant positions from which to fight," he detailed. Essentially, what Musashi means is that overwhelming your opponent will result in them defaulting into a defensive state. While assaulting your adversary, the element of surprise can destabilize your opponent's strategy to gain an advantage. In the case of ethical legislative advocacy, bold and assertive measures must be taken all at once. Musashi adds that, "In large-scale strategy, when the enemy starts to collapse, you must pursue him without letting the chance go. If you fail to take advantage of your enemies' collapse, they may

recover."[314] Once Congress members are in a defensive political state, they are vulnerable to your "final blow" or mass petitioning to pass legislation that restricts stock trading by legislators. Allowing lawmakers the opportunity to recover would be allowing them to stall legislative action until the wave of media has passed. Then, with the publicity out of the way, they may attempt to sweep the issue under the rug after all is said and done. Remember, these lawmakers do not hold alacrity in their hearts when being heavily pressured to regulate themselves from profiting immensely. Hence, the importance of aggressive pressure in a successful political campaign.

Understanding Your Opponent's Weaknesses

In *The Wind Book*, the value in putting yourself in your opponent's shoes is expressed. Miyamoto Musashi does so by comparing the teachings of other swordsmanship schools with his. In his opinion, alternative schools placed excessive emphasis on form and traditions, instead of practicality and efficacy in an actual combat setting. Even though he viewed other schools' educational techniques as inferior, Musashi still told samurai to understand the tactics and philosophies of other martial arts schools. Through this comparative analysis, samurai can then recognize the strengths and weaknesses of their opponents in various styles.[314] Similarly to how Musashi studied his opponents to find their Achilles' heel, advocates should determine the list of reasons why lawmakers might resist such a ban. When comprehensively understanding the lawmakers' perspective, watchdog groups can threaten what elected lawmakers truly care about to incentivize them to pass a self-regulatory law. Successful anti-

corruption efforts will only occur if we threaten their financial incentives through fines, political office through public shaming, and national reputation regarding their moral compass. As Musashi once wrote, "When you are thoroughly conversant with strategy, you will recognize the enemy's intentions and thus have many opportunities to win.[315]"

Embracing Innovation and Infinite Potential

Finally, *The Void Book* covers the ill-defined aspects of strategy. This conclusive chapter is defined by Musashi as, "What is called the spirit of the void is where there is nothing. It is not included in man's knowledge. Of course, the void is nothingness. By knowing things that exist, you can know that which does not exist. That is the void." Basically, he depicts the void as the state where physical and mental constraints are transcended in order to surpass what is logically understood. The word he alluded to most was *intuition*.[314] For advocates, this means being open-minded and possessing the willingness to adjust the activism approaches taken. The void is also a continuous state of growth and determination. Activists should be consistently learning and researching about the effectiveness of their strategies, the same way Musashi instructed his students to do with almost all of his teachings. Additionally, in the face of setbacks, heavy opposition, or intense lobbying from political opponents, advocacy groups should never deviate from their composure and clarity in achieving their goals. On balance, the void is representative of a space of infinite potential.

Creative Strategies for Maximum Impact

Advocates are encouraged to use innovative and unorthodox strategies to advertise their message more effectively. To garner attention and support from all parts of the population, activists should leverage social media campaigns to appeal to the younger generation. For more artsy groups, perhaps political satire comics would be the best way to seize their attention. Interactive public demonstrations, collaborations with famous personalities, and even hosting performance events to showcase the asinine concept of allowing Congress members to trade stocks are all great mediums for spreading awareness about unethical lawmaking. If advocates consistently push for change with fervor and strategic thinking, the movement to reform Capitol Hill will certainly succeed.

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